REPORT RESUMES

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THE TEACHER'S DAY IN COURT--REVIEW OF 1966. AN ANNUAL COMPILATION. SCHOOL LAW SERIES.

BY- SHAPIRO, FRIEDA S. EVANS, JACK

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CASE DIGESTS OF 70 STATE AND 13 FEDERAL JUDICIAL DECISIONS OF PARTICULAR INTEREST TO TEACHERS AND OTHER PROFESSIONAL SCHOOL PERSONNEL IN PUBLIC SCHOOLS AND COLLEGES ARE ARRANGED BY STATE AND CLASSIFIED UNDER 11 HEADINGS--(1) CERTIFICATION AND ELIGIBILITY--7, (2) SALARIES--9, (3) CONTRACTS--16, (4) TENURE--23, (5) SCHOOL DESEGREGATION--3, (6) CIVIL RIGHTS--6, (7) LOYALTY--2, (8) LIABILITY FOR PUPIL INJURY--4, (9) RETIREMENT--7, (10) WORKMEN'S COMPENSATION--6, AND MISCELLANEOUS--15. FIFTEEN OF THE CASES ARE REPORTED UNDER MORE THAN ONE HEADING. AN INTRODUCTORY COMMENT SUMMARIZES CASES UNDER EACH OF THE HEADINGS AND POINTS OUT THAT DECISIONS REPORTED INCLUDE LITIGATION FROM 31 STATES. FIVE STATES ACCOUNT FOR HALF OF THE DECISIONS RECORDED--ARIZONA (5), CALIFORNIA (7), FLORIDA (5), KENTUCKY (4), AND NEW YORK (21). ISSUES RELATING TO TEACHER TENURE ARE MOST NUMEROUS, WITH 20 NEW CASES APPEARING DURING 1966. EA 001 312 IS A RELATED DOCUMENT. THIS DOCUMENT IS AVAILABLE AS STOCK NO. 435-13314 FROM THE PUBLICATIONS EDITOR, RESEARCH DIVISION, NATIONAL EDUCATION ASSOCIATION, 1201 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20036, FOR $1.25. (JK)

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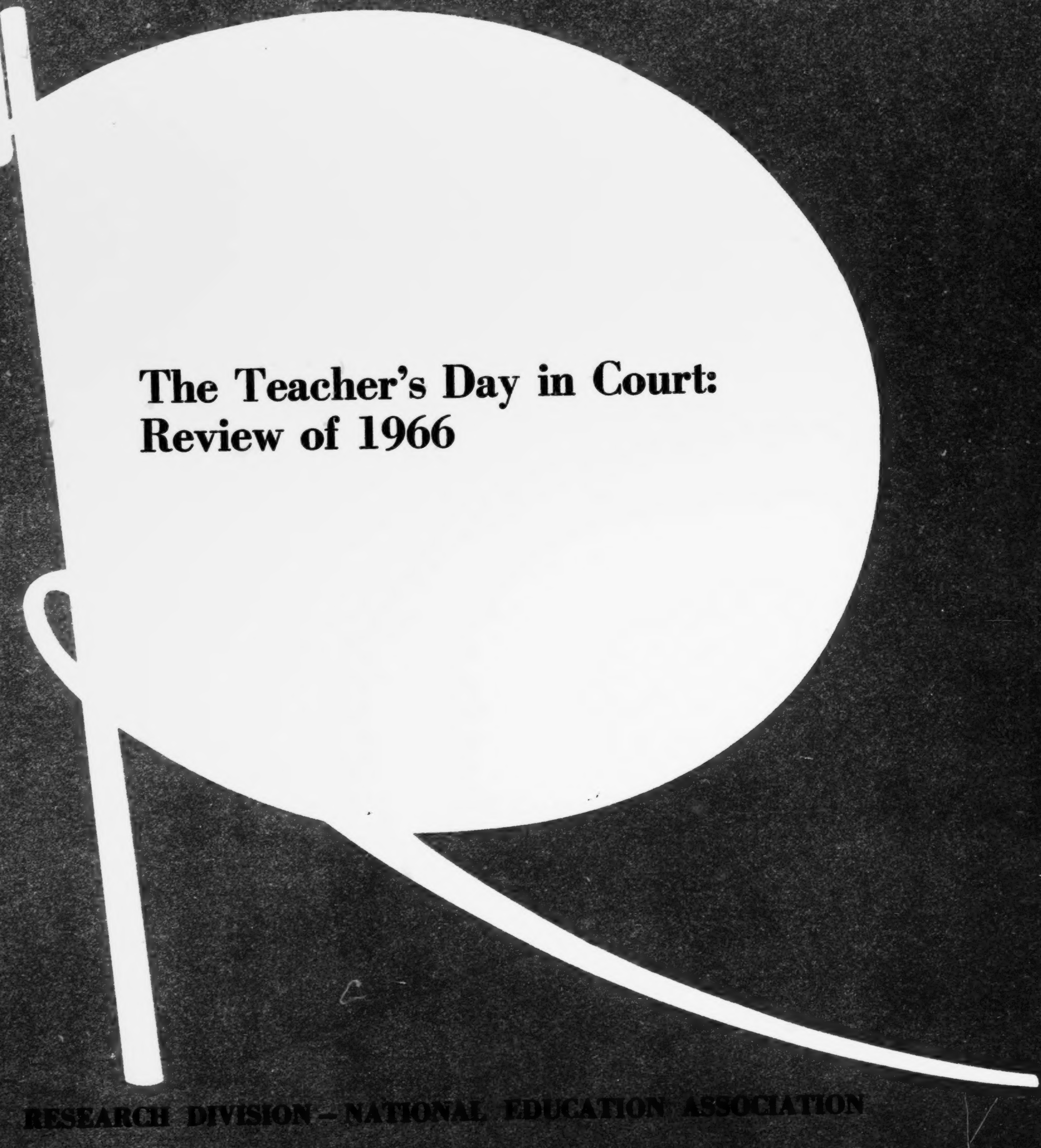

The Teacher's Day in Court: Review of 1966

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The Teacher's Day in Court: Review of 1966

An Annual Compilation

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FOREWORD

From the time of entry into the teaching profession until exit at retirement, the public-school teacher is surrounded by legal rights as well as legal responsibilities. What these rights and responsibilities are and whether they have been met or breached by the state, the local school employer, and the teacher, have been the crux of lawsuits by and against teachers over the years. The nature of the legal issues in dispute, the context in which they arise, and how they are judicially resolved, are of interest and importance to teachers, school administrators, and school boards.

Current information on legal decisions in this area is provided in this report, the 28th of an annual series started by the NEA Research Division in 1939. Presented here are digests of the 1966 published decisions from state and federal courts in which teachers or other certificated school personnel were involved.

This report was prepared by Frieda S. Shapiro, Assistant Director, with the assistance of Jack Evans, Research Assistant.

GLEN ROBINSON
Director, Research Division

INTRODUCTION

Included in this report are digests of 83 court decisions concerned with legal issues of particular interest to teachers which were published in the National Reporter System during the 1966 calendar year. With few exceptions, litigants in these cases were teachers or other professional school personnel in the public elementary and secondary schools and in publicly financed institutions of higher education.

The 83 cases covered here originated in 31 states. Of these, 70 cases were decided in state courts. Represented are 34 decisions from the highest state court of the state where the action was started, 23 decisions from intermediate state appellate courts, and 13 decisions from trial courts. Federal courts were responsible for the remaining 13 decisions. One of these decisions was rendered by the Supreme Court of the United States, four decisions came from the federal circuit courts of appeal, and eight decisions were handed down by federal district courts.

Five states account for one-half of all of the decisions in this compilation. Once more New York led the list with 21 decisions, but it must be remembered New York trial court decisions are published. This is not so in most other states. The four other states with numerous cases were California with seven, Arizona and Florida with five cases each, and Kentucky with four cases.

The case digests appear in this report under the following 11 topic headings: (a) eligibility and certification, (b) salaries, (c) contracts, (d) tenure, (e) school desegregation, (f) civil rights, (g) loyalty, (h) liability for pupil injuries, (i) retirement, (j) workmen's compensation, and (k) miscellaneous. When there is more than one case from a state under the same topic, the cases are listed alphabetically by title. Table 1 classifies the 83 cases by state and major issue presented. Cases with more than one issue are cross-referenced.

In keeping with the pattern of past years, issues relating to teacher tenure were most numerous, with 20 cases in this subject area appearing during 1966. Contract cases ranked second, with 13 decisions, followed by eight decisions involving salaries and seven decisions concerned with retirement questions. Six cases each are to be found under the topics of civil rights and workmen's compensation. The 11 cases in the miscellaneous category include issues on income tax deductions for educational travel expenses incurred by teachers, libel and other tort actions, teacher dismissals, and one case concerned with collective bargaining.

Another issue of importance to teachers which was raised in the courts again in 1966 related to the assignment of teaching staffs to schools on a racially segregated basis. This question appears with regularity in school desegregation suits brought by or in behalf of Negro pupils. Since teachers themselves were not litigants in these cases, the summaries of the decisions are not covered in this report, but they may be found in The Pupil's Day in Court: Review of 1966, a companion school law publication of the NEA Research Division.

Included in this report, however, is a North Carolina case in which an individual teacher and the North Carolina Teachers Association as plaintiffs sought to enjoin faculty segregation following pupil desegregation under a freedom of choice plan adopted by the school board in Stanley County. The federal district court ruled that the placement of teachers in this school system was constitutionally unobjectionable. The action also asked that the individual teacher be reinstated in her previous position. This teacher had been employed under annual contracts but was refused re-employment in her school because of difficulties with her principal, and she could not obtain another position in the system. Although the court found that the procedures followed did not accord with preferable norms of personnel administration, it was held that the failure of the school board to provide the teacher with notice of charges and a hearing did not amount to a denial of due process rights.

Also reported here are two cases in which Negro teachers in nontenure states whose employment was terminated as a result of school desegregation in their school districts sued for relief on grounds of denial of constitutional rights. The U. S. Circuit Court of Appeals of the Eighth Circuit held in an Arkansas case that Negro high-school teachers were dismissed because of race in deprivation of their constitutional rights when the local

TABLE 1.--MAJOR ISSUES IN CASES INVOLVING TEACHERS IN 1966

State	Eligibility and certification	Salaries	Contracts [a]	Tenure [b]	School desegregation	Civil rights	Loyalty	Liability for pupil injury	Retirement	Workmen's compensation	Miscellaneous	Total cases
1	2	3	4	5	6	7	8	9	10	11	12	13
Alaska	...	...	...	1	...	...	...	...	...	...	...	1
Arizona	...	...	1	1	...	...	1	1	...	1	...	5
Arkansas	...	...	...	...	1	...	...	...	...	...	...	1
California	...	1	...	3	...	...	...	...	1	...	2[c]	7
Colorado	...	1	1	...	...	...	...	...	...	...	...	2
Connecticut ...	...	...	...	...	...	1	...	...	...	...	...	1
Delaware	...	...	...	...	...	...	...	...	...	1	...	1
Florida	...	...	...	4	...	...	...	...	...	...	1[d]	5
Idaho	...	...	...	...	...	...	...	...	...	1	...	1
Illinois	...	...	1	1	...	...	...	...	...	...	1[e]	3
Iowa	...	...	1	...	...	...	...	...	...	...	...	1
Kentucky	...	...	1	1	...	...	...	...	...	...	2[f]	4
Louisiana	...	...	...	1	...	...	...	...	1	...	...	2
Massachusetts .	...	1	1	...	...	...	...	...	...	...	...	2
Michigan	...	...	...	...	...	...	...	2	...	1	...	3
Minnesota	...	...	...	...	...	...	...	...	...	...	1[g]	1
Mississippi ...	...	...	1	...	...	...	...	...	...	...	...	1
Montana	...	...	1	...	...	...	...	...	...	...	...	1
Nebraska	...	...	1	...	...	...	...	...	...	...	...	1
New Hampshire .	...	...	1	...	...	...	...	...	...	...	...	1
New Jersey	...	1	...	1	...	...	...	...	...	1	...	3
New York	3	4	1	5	...	...	1	...	5	1	1[h]	21
North Carolina	...	...	...	...	1	1	...	...	...	...	...	2
Ohio	...	...	1	1	...	...	...	...	...	...	...	2
Pennsylvania ..	...	...	...	1	...	...	...	1	...	...	...	2
South Carolina	...	...	...	...	...	3	...	...	...	...	...	3
Texas	...	...	...	...	...	...	...	...	...	...	2[i]	2
Virginia	...	...	...	...	1	...	...	...	...	...	...	1
Washington	...	...	...	...	...	1	...	...	...	...	...	1
Wisconsin	...	...	...	...	...	...	...	...	...	...	1[j]	1
Wyoming	...	...	1	...	...	...	...	...	...	...	...	1
Total number of cases	3	8	13	20	3	6	2	4	7	6	11	83

[a] Also continuing contracts of the spring notification type.

[b] Also tenure-type continuing contracts.

[c] Includes suit by a teacher to rescind a resignation and a tort action.

[d] Action by teacher seeking disclosure of score on National Teachers' Examination.

[e] Negligence action for teacher injury.

[f] A taxpayer suit against school superintendent to recover funds, and a dismissal action.

[g] Collective bargaining issue.

[h] Income tax case.

[i] An income tax case and a tort action by a teacher alleging improper discharge.

[j] Libel suit.

school board abandoned its all-Negro high school. Since the affected teachers had secured positions elsewhere, the court did not order their reinstatement, but ruled that they were entitled to preference in employment in the school system when future openings occurred and to money damages as determined individually.

In the second case, the issue before the U. S. Circuit Court of Appeals for the Fourth Circuit was the nature of the relief to be granted to seven Negro teachers who were adjudged by the federal district court to have been improperly discharged when the Giles County, Virginia, school board integrated its school system and closed down its Negro schools. By way of relief, the district court issued a general injunction against further discrimination in personnel policies in the school system and ordered the board to notify the Negro teachers of any vacancy for which they may be qualified and offer them an opportunity to apply for a teaching position in competition with others who might seek employment. The appellate court concluded on the basis of the evidence that the Negro teachers were discharged because of their race and, therefore, they were entitled to a mandatory injunction requiring their reinstatement. Further, the individual teachers were entitled to re-employment in any vacancy for which they were qualified by certificate or experience.

Four of the six cases in this compilation involving issues of employment discrimination on civil rights grounds were instituted by Negro teachers from North Carolina and South Carolina, two states without teacher tenure laws. Two teachers had been discharged during their contract terms and two others were denied re-employment in their school systems at the expiration of their annual contracts. The teachers claimed in each instance that their community activities in behalf of Negro civil rights was the reason for the school-board action. In three of the cases, the courts held in favor of the teachers. The courts ruled that while under state law the school boards had wide discretion in the employment and discharge of teachers, in these instances the board actions were arbitrary and discriminatory in that the basis for the actions was the teachers' exercise of their constitutional rights. Consequently, the teachers were entitled to reinstatement, or re-employment, or money damages. In the fourth case, the U. S. Circuit Court of Appeals for the Fourth Circuit found that the teacher had made no attempt to support his allegations that his discharge was discriminatory, and therefore upheld the dismissal of his complaint.

School boards in Connecticut and Washington were charged with unfair employment practices. The Connecticut Supreme Court ruled that there was insufficient evidence to support a finding that the local school board had discriminated for reasons of age against a 50-year-old school employee who was an unsuccessful candidate for a supervisory position. The issue before the Washington Supreme Court was the right of the school district charged with an unfair labor practice in requiring applicants to submit pre-employment photographs to appeal a cease and desist order issued by the state board against discrimination. On the basis of the controlling statute, the court held that the order was not judicially reviewable.

The constitutionality of loyalty oath statutes in Arizona and New York was challenged by teachers during 1966. In a five-to-four decision, the Supreme Court of the United States ruled the Arizona act unconstitutional. The Court held that the failure of the act to restrict the scope of the membership provisions to persons who join subversive organizations with "specific intent" to further the illegal aims of the organization, infringed on the First Amendment guarantee of freedom of association. The New York loyalty oath statutes and the implementing administrative regulation survived attack in a federal district court. The Supreme Court accepted an appeal, and in a five-to-four opinion rendered on January 27, 1967, declared the statutes and the regulations and procedures adopted for their implementation to be unconstitutional. The statutory sections which required the removal of teachers for treasonable and seditious utterances and acts were held to be invalid under the First Amendment on grounds of vagueness. The statutory sections which made membership in the Communist Party prima facie evidence of disqualification for teaching were held to be impermissibly overbroad.

An issue before the Minnesota Supreme Court was whether the state labor conciliator could conduct hearings requested by a teachers union to determine the appropriate unit to represent Minneapolis teachers in their negotiation with their school board pending an appeal before the same court contesting the constitutionality of the Public Employees Labor Relations Act. Parties to the appeal included the local teachers union, the local education association, and the school board. The court stayed the proceedings before the conciliator, and subsequently decided that the statute, which specifically excluded teachers from its provisions, was constitutional. (Minneapolis Federation of Teachers v. Obermeyer, ___ N.W. (2d) ___, December 19, 1966.)

Courts in three states decided seven cases concerning teacher retirement. A lower appellate court in California ruled against a retired teacher who sought a determination that certain 1957 amendments to the state teachers' retirement law were unconstitutional as applied to her because the amendments reduced her pension as computable under prior law. A Louisiana case involved a provision in the teacher retirement statute that no optional selection shall be effective when a beneficiary dies within 30 days after retirement and that such beneficiary shall be considered an active member at the time of death. The Louisiana Supreme Court ruled that this provision could not deprive the widow of a teacher of monthly survivor benefits where the teacher died within 30 days after his effective date of retirement but lived 30 days beyond the date on which his retirement application was filed. The court held that once the application for retirement was approved, the action operated retrospectively and the effective date of retirement reverted to the date of the retirement application.

The other five retirement cases were brought against the New York City teachers' retirement system. Issues included credit for prior service in the Works Project Administration, credit for military service during a leave of absence from the school system, a disability retirement dispute, the right of a beneficiary of a deceased teacher to a higher benefit, and the right of a widow of a teacher to receive a lump-sum payment as a beneficiary rather than as administratrix of the teacher's estate.

CERTIFICATION AND ELIGIBILITY

Illinois

Wade v. Granite City Community Unit School Dis-Number Nine, Madison County
218 N.E. (2d) 19
Appellate Court of Illinois, Fifth District, May 17, 1966.

(See page 25.)

New York

Board of Education of City School District of New York v. Allen
264 N.Y.S. (2d) 813
Supreme Court of New York, Special Term, Albany County, December 1, 1965.

(See page 27.)

Gassner v. Board of Examiners of the City of New York
273 N.Y.S. (2d) 264
Supreme Court of New York, Special Term, Kings County, Part I, July 15, 1966.

A teacher passed an examination for assistant to the principal. Her name was placed on an eligible list to await appointment. Her grade was lower than it would have been because she did not receive credit for many years of claimed teaching experience that was unconfirmed. The teacher sought a court order adjudging that the board of examiners' rating of the experience and training test part of the examination was illegal and that the board make publicly available its current schedule for competitive rating and in advance of all future examinations.

The teacher contended that the board's rating of training and experience for the position exceeded its statutory authority as well as the bylaws of the board of education with respect to requirements of degrees, graduate course credits, and experience.

Upon scrutiny of these statutory guides the court was of the opinion that the teacher's contention was untenable. By law, the board had sole jurisdication over conduct of the examinations. The board could reasonably augment the basic standards set in the bylaws.

The teacher additionally claimed that she had been denied a right of appeal as provided for by law. The court found, however, that there was no statute which required the board to provide an appeals procedure for applicants for teaching licenses, and that the teacher did not come within the bylaw providing a qualified right of appeal, applicable only to candidates refused eligibility or a satisfactory rating. Thus, the board's decision not to process the teacher's appeal because she received a passing grade, and its decision not to release its schedules adopted for training and experience, as the teacher demanded, was in the court's view, within the board's statutory discretion and not arbitrary, capricious, or illegal. Therefore, the court would not substitute its judgment for that of a duly constituted administrative body. Accordingly, the teacher's action was dismissed.

Glass v. Board of Education of City of New York
265 N.Y.S. (2d) 294
Court of Appeals of New York, October 28, 1965.

(See page 28.)

Meyerson v. Allen
264 N.Y.S. (2d) 986
Supreme Court of New York, Special Term, Albany County, November 23, 1965.

A substitute teacher petitioned the court to review, vacate, and annul the decision of the acting state commissioner of education which sustained the determination of the board of examiners of the New York City Board of Education denying him a license as a regular teacher of mathematics in the junior high schools. The board and the commissioner moved to dismiss the case on the ground that the decision was not reviewable by the court.

The question raised by the teacher in his appeal to the commissioner was whether the school principal, who rated him satisfactory as a substitute teacher, could rate him "not quite satisfactory" in appraising his record upon his application for a license as a regular teacher. Relying on precedent, the acting commissioner found that higher standards of ability in teaching performance could be required of a permanent teacher than of a substitute.

The court held that even without reliance on precedent, the finding of the acting commissioner was neither unreasonable nor purely arbitrary. The motion to dismiss the teacher's petition was granted.

Schwartz v. Bogen
266 N.Y.S. (2d) 26
Supreme Court of New York, Special Term, Kings County, Part I, December 28, 1965.

A New York City teacher was denied a license as a chairman, department of typewriting and stenography in high schools, because she failed the written examination for the license. The test had two parts, yes-no questions and an essay portion. The teacher received a 56.22-percent rating which was below the passing mark of 60 percent. She asked the board of examiners to furnish her with model answers to the essay portion for the purpose of filing an appeal, but this request was denied as contrary to policy. The teacher then sought a court review, claiming that this refusal was arbitrary and an abuse of discretion.

The court denied the teacher's petition, holding that the board was not required to furnish master or model answers to the essay questions or any other part of the examination and its determination not to grant the request was neither arbitrary nor capricious.

Wyoming

Sorenson v. School District No. 28, County of Big Horn, State of Wyoming
418 P. (2d) 1004
Supreme Court of Wyoming, October 21, 1966.

(See page 20.)

SALARIES

California

Berry v. Coronado Board of Education
47 Cal. Rptr. 727
District Court of Appeal, Fourth District,
California, November 24, 1965.

A teacher who was a Ph.D. candidate requested and was granted a sabbatical leave for the school year 1960-61 by his school board in order that he might study and do research for his doctorate. The school-board rule was that to be compensated for the sabbatical leave, the teacher had to submit transcripts of study after completion of the leave and within 60 days of return to duty.

During the year of his leave the teacher moved to Berkeley. He did not register with the University of California, but did work on his doctoral dissertation. Five months after returning to school teaching, he submitted two University of California transcripts showing attendance before and after the leave and a letter from his doctorate committee supervisor, indicating his work at the university during his leave period. Although additional time beyond the 60-day period was granted, the teacher did not submit more than the transcripts and letter. The school board determined that he did not submit sufficient evidence, as required by the board rules and, therefore, he was ineligible for compensation.

The teacher petitioned the court to compel payment of the compensation. In support of his petition, the teacher argued that the rule requiring transcripts of study was impossible of performance, that he substantially complied with the rule, and that the rule should not be strictly construed.

The court affirmed a lower court decision that substantial evidence supported the finding that the teacher was not entitled to compensation. The grounds were that he did not submit sufficient evidence of his activities during the sabbatical year as required by the school board.

The court said that the only question to be decided on appeal was whether the leave agreement between the teacher and the board was capable of performance by the teacher, and, in fact, was performed by him. As to the facts, the court found that the teacher did not take the initiative to resolve his problem within the 60-day period by submitting affidavits or verified statements regarding his leave activities by those who knew of them. Nor did he appear personally before the board. Hence, his conclusion that the required submission of transcripts was impossible of performance appeared to the court to be nothing less than his unsupported, unfounded conclusions. Indeed, there was evidence that the board might have been convinced of his rightful activities during the sabbatical leave sufficient to entitle him to compensation if he had submitted further evidence.

The court concluded that the teacher not only failed to comply with sabbatical leave rules, but also that his inertia and delay showed no real attempt on his part to comply. Refusal to compensate him for the period was therefore upheld.

Colorado

Maxey v. Jefferson County School District No. R-1
408 P. (2d) 970
Supreme Court of Colorado, In Department,
December 20, 1965.

The administratrix of the estate of a deceased teacher with tenure status sued the school district to recover the sum of $8,984.09 in salary claimed to be due on the ground that the teacher had been paid less than the tenure teacher salary schedules in force from September 1, 1953, to April 8, 1960, the date of his death. This tenure teacher during this period had served continuously in an administrative capacity as a county-wide supervisor.

The tenure law provides that a teacher on continuous tenure could be transferred from one school, position, or grade to another within the same school district, but such transfer shall not change the position to which the teacher is entitled on the regular teacher salary schedule. Another provision states that the salary of tenure teachers may be changed in accord with the general salary schedule, provided there is no reduction in the salary of a tenure teacher unless there is a general reduction in the salaries of 50 percent or more of all teachers in the district.

Since the teacher had tenure and there was no general reduction in salaries under the 50-percent reduction provision, the court held as a matter of law that the school district failed to pay the teacher the full salary to which he was entitled under the adopted salary schedules. And since the school district did not plead defense as to time limits for bringing the action, the court held that the administratrix was entitled to judgment for the full amount sued for with interest and costs.

Massachusetts

A'Hearne v. City of Chelsea
217 N.E. (2d) 767
Supreme Judicial Court of Massachusetts, Suffolk, June 10, 1966.

The school committee reclassified teachers for salary purposes. Several tenure teachers challenged the reclassifications. In 1947, the committee had established salary schedules differentiating between teachers with bachelor's degrees and those with master's degrees. In 1951, the committee increased the salary of those possessing a doctorate. In 1962, the committee determined that the salary schedule pertaining to master's and doctorate degrees should apply only to those who obtained degrees from accredited institutions.

The teachers in this case had received postgraduate degrees from unaccredited schools. They contended that the committee's reclassification of salary schedules impaired the obligations of contracts and was therefore void. The teachers sought to recover for resultant loss of salary. The court held that the reclassification was valid and did not infringe any rights of the teachers.

The court reasoned that the teachers' contracts were subject to the power of the school committee to reduce salaries, as long as the reclassification was part of a general salary revision equally affecting all teachers in the same salary grade. A state law provided that no salary could be reduced without the teacher's consent except by such over-all salary revision. Statutes also empowered school officials to differentiate teachers' salaries on the basis of preparation and training.

For these reasons, the court held that the school committee acted reasonably in differentiating between persons with degrees from accredited and nonaccredited institutions. As between teachers with the same preparation and training, there was no differentiation. Thus, the result of the committee's action was a general salary revision as condoned by law.

The court was also of the opinion that the school committee had authority to establish a new classification at an increased salary for persons with advanced degrees from accredited schools, since such classification bore a rational relation to the committee's objectives.

Mississippi

Miles v. Cox
184 So. (2d) 869
Supreme Court of Mississippi, April 4, 1966.

(See page 17.)

New Jersey

Woodbridge Township Education Association v. Board of Education of Woodbridge Township
Peterson v. The Board of Education, Township of Woodbridge
219 A. (2d) 187
Superior Court of New Jersey, Chancery Division, March 31, 1966.

Representatives of the local education association and the local teachers union brought two declaratory judgment actions against the school board for a determination of the date of applicability of legislation with respect to binding salary policies of school boards.

Under a bill passed in 1965, which was signed into law by the governor on January 11, 1966, and became effective February 15, 1966, teacher salary policies adopted by a school board are binding, and cannot be cut off by the board or its successor for two years, or by the voters, the board of school estimate, the municipal governing bodies, or the commissioner of education in any subsequent school budget, including specifically the budget adopted for the school year starting July 1, 1966. But apparently to resolve uncertainty as to the date of effectiveness of this law, a new bill passed in March 1966 (at the time this litigation was before the court), would freeze the salary policies and schedules in budgets adopted for the school year starting July 1, 1967.

In January and February 1966, the school board twice approved a budget for 1966-67, which provided a uniform salary increase of $400 to teachers. Both times, the voters turned down the budget. Thereafter, the township council in conference with the school board reviewed the budget, and on March 1, 1966, reduced the proposed current expenses by $700,000, without itemization. The school board filed a petition with the commissioner of education to set aside this action. On March 21, 1966, the school board approved a $300 salary increase to teachers.

The teachers' organizations maintained that the $400 raise was frozen by Chapter 236, the enactment signed into law on January 11, 1966. In his affidavit outlining the budget procedure, the school-board president stated that the salary increases were not fixed irrevocably as a matter of policy when submitted to the voters, but that the budget recommendations were subject to review and reappraisal upon rejection by the voters. The affidavit also asserted that the school board took no action whatsoever between enactment of Chapter 236, and the second electoral defeat on February 23, 1966.

In view of these circumstances, the court held that a fact question was raised as to whether the teacher salary increases approved by the board on January 19, 1966, and again on February 10, 1966, embodied a salary policy inviolate thereafter within the legislative intendment. Therefore, the actions were dismissed on the grounds of failure of the teachers to exhaust administrative remedies before the commissioner of education.

One plaintiff, the teachers union representative, argued further that Chapter 236 was superfluous because a provision in the state constitution which enforces good faith bargaining between a governmental subdivision and its employees, invalidates a unilateral rescission by the school board. The court rejected this argument saying the constitutional guarantee which recognizes the right of public employees to organize and present grievances and proposals through their chosen representatives does not vest a uniform teacher salary increase of $400 per year in the township, impervious to any subsequent reduction by the school board itself, or by the voters, the township council, or the commissioner of education, because of participation by teachers and their organizations in discussions and negotiations during the school budget formulation.

New York

Garber v. Board of Education of the City of New York
271 N.Y.S. (2d) 329
Supreme Court of New York, Special Term, Kings County, Part I, June 13, 1966.

A New York City teacher brought proceedings seeking a review of a board of education decision denying her claim for three days' sick leave pay. This claim was presented with a certificate by a licensed chiropractor stating that he had treated the teacher for a "lumbo sacral sprain [of] discogenic origin." The rejection of the claim was based on a letter from the board's medical director who said the certificate was unacceptable because chiropractors are not authorized to practice medicine in New York State. He pointed out that the condition treated necessarily involved a diagnosis which only a medical doctor could properly make, and which the chiropractor was not equipped or authorized by law to make. Bylaws of the school board governing sick-leave pay require that applications for sick pay must include a certificate of a physician or other licensed doctor.

The teacher contended, among other things, that the school board exceeded its lawful authority in rejecting the chiropractor's certificate and denying her claim for sick pay.

The court held that the bylaw covering sick leave was a valid exercise of the school board's power, and that the decision the board reached in this instance was a reasonable interpretation of the bylaw. The court pointed out that the issue here was diagnosis, and not treatment of an illness. What the board in effect required as a minimum was a diagnosis by a properly accredited expert that the sick leave and pay the teacher requested be based on a determination of a recognizable illness. Since the teacher had never furnished a diagnosis, the court held that the refusal of the board to accept her application for sick-leave pay was not arbitrary or without a reasonable basis.

Gladstone v. Board of Education of City of New York
267 N.Y.S. (2d) 444
New York Supreme Court, Special Term, Kings County, Part I, February 2, 1966; affirmed, 274 N.Y.S. (2d) 416, Appellate Division, Second Department, October 31, 1966.

New York City elementary-school principals sued to procure a pay schedule equal to that of principals of junior high schools who were assigned by the school board to supervise newly created intermediate schools. These intermediate schools were part of a two-year experimental reorganization program to replace junior high schools, and covered either grades 6-7-8 or grades 7-8. Among the professed aims of these intermediate schools were departmentalization of studies, development of skills, and wider social groupings.

Plaintiffs contended that the intermediate schools were by definition and in actual practice elementary schools, and that the functions and duties of the principals were similar to those in the elementary schools.

The court ruled that since the purpose of establishing the intermediate schools was to reorganize the learning process and to provide specialization, testing, and guidance not previously available to elementary-school pupils, the duties and functions contemplated for the principals in the intermediate schools were different from those of principals in the elementary schools. For these reasons, the action was dismissed.

This judgment was affirmed on appeal. The court was of the opinion that since the definitions of elementary school in the regulations of the state commissioner of education and in the bylaws of the board of education had been suspended during the period of the experiment with the intermediate schools, it could not be said that an intermediate school is an elementary school by definition. Nor are the duties of an intermediate-school principal the same as those of an elementary-school principal. What was involved here, the court said, was the discretionary power of the school board to increase the salaries of the elementary-school principals. An application to review the exercise of this discretion should be made to the state education commissioner, not to the courts.

Gordon v. Board of Education of the City of New York
274 N.Y.S. (2d) 543
Supreme Court of New York, Kings County,
Part I, October 11, 1966.

(See case digest above.)

The Appellate Division had ordered the reinstatement of a discharged employee with full pay for the period of his suspension, less the amount of compensation he received from other employment during that period.

On remand, it was established that the employee received no money from other employment during the period of his suspension and discharge.

The school board was prepared to pay the employee the sum of $28,897.78, the full salary payable during this period, but without interest. It contended that interest may not be included in the judgment because the order of the Appellate Court did not so provide. The employee claimed he was entitled to interest under a statute providing for interest in breach of contract awards. He argued that the proceeding he brought was in reality one for a breach of contract against the school board for violation of his tenure rights.

The court held that the employee had no right to receive interest on the back salary. The court said that provision in the tenure law that upon acquittal of any charges, the employee is to be reinstated with full pay could not be construed as giving the employee a cause of action for breach of contract so as to invoke the statutory provision for mandatory interest.

Petition of Hickey
268 N.Y.S. (2d) 914
New York Supreme Court, Rockland County,
April 15, 1966.

An elementary-school principal sought a court order directing the Orangetown Central School District No. 1 to pay him salary increases which he claimed were due him under Section 3106-b of the Education Code. This section, enacted in 1964, provided in part that a board of education shall grant salary increases according to a prescribed formula to school principals above the grade of teacher, whenever it grants increases to teachers on the maximum of their salary schedule. The statute defined "maximum" salary as "the salary of a teacher at the highest salary level which may be reached by length of service and which includes all differentials and/or increments to which he may be entitled."

The school district had granted salary increases to its teachers in steps 1 to 16, but granted no increment to step 17, the category applicable to this principal.

The court held that under Section 3106-b, the school board was required to grant the salary increases to the principal. The school board could not bypass the express legislative mandate by the technique of eliminating step 17 from those categories accorded salary increases.

CONTRACTS

Alaska

Spicer v. Anchorage Independent School District
410 P. (2d) 995
Supreme Court of Alaska, February 14, 1966.

(See page 21.)

Arizona

Johnson v. Board of Education for Phoenix High School District
419 P. (2d) 52
Supreme Court of Arizona, October 19, 1966.

In November 1959, the teacher was arrested and charged with being drunk and disorderly and committing lewd and lascivious acts. He pleaded not guilty to both charges. Two weeks later a school board hearing was scheduled. The teacher, who was in his third year as a probationary teacher, asked to appear and defend himself. His request was denied, and because of this denial, he did not file a written request to appear. Later, the teacher received a letter informing him that his contract was terminated because of his "drunkeness, disorderliness and indecent acts." The following June, the teacher was found not guilty of the charges. In light of this development, he inquired what the board was going to do. No board action was taken.

The teacher then sued for damages for breach of contract and for defamation. The trial court directed a verdict in favor of the board. The teacher appealed, arguing that the question of whether the board acted properly should have gone to the jury.

The teacher claimed that he was improperly discharged and was entitled to damages based on his contractual salary for the remainder of the contract period. The board took the position that the teacher had not "well and faithfully" performed his contract, as required by the terms of the contract and, therefore, cancellation of the contract did not entitle the teacher to redress. An issue thus raised was whether the board was justified in cancelling the contract solely because the teacher was charged with infractions of law. The board contended that under the statutes only a continuing teacher is entitled to a hearing and an appeal in the event of dismissal, and that the statutes deny a probationary teacher access to the courts when his contract is cancelled.

The court examined the statutes to determine whether the teacher was precluded from bringing a breach of contract action, and concluded there was nothing therein to imply legislative intent to deprive a probationary teacher access to the courts to sue for breach of contract when he was currently performing under a contract. The only distinction in rights between a continuing and a probationary teacher, said the court, is that the continuing teacher has a right to a hearing and appeal if he is notified that the contract will not be renewed. If the contract of a probationary teacher is not to be renewed, only proper notice is required and the board need not show good cause, although during a currently operative contract a probationary teacher may not be discharged except for good cause after a hearing. Merely being charged with a crime does not constitute such good cause, as the board contended. If the charges were true, the court said, the teacher would have been properly discharged. But while charges are merely pending, the probationary teacher may not be summarily fired, especially where, as here, his record was spotless except for the charges in questions.

Since the teacher had no hearing, the court held that the issue of whether or not the school board had good cause to terminate the contract should have been submitted to the jury. Therefore, the directed verdict on the breach of contract action was reversed.

In his second cause of action, the teacher alleged that the board made false and defamatory statements regarding him. The board maintained that discharging the teacher was no more than nonperformance of an agreement to continue employment, thus precluding tort liability. Since the teacher's evidence on this cause of action fell short of being sufficient to submit the question to a jury, the trial court was held not to have erred in granting the board a directed verdict on the second cause of action.

Colorado

Boatright v. School District No. Six of Arapahoe County
415 P. (2d) 340
Supreme Court of Colorado, June 13, 1966.

On November 11, 1961, the teacher obtained an application blank for a position with the school district for the 1962-63 academic year. She was pregnant at that time. The school district's maternity policy adopted on March 20, 1962, was to grant leaves without pay to pregnant teachers with tenure, but not to probationary teachers, who had to resign but without prejudice. No teacher was to return to her position until the semester following the child's first birthday. The teacher returned her employment application two days after the maternity policy was adopted. Her child was born 11 days later.

On May 9, 1962, the teacher was offered a probationary teaching contract and accepted, agreeing to comply with the district's rules and regulations. At the time, she was unaware of the district's maternity policy and did not notify the district about the birth of her child. She later learned of that policy, informed the district of the child and inquired as to her status. The district then notified the teacher that its maternity policy precluded honoring the contract and requested her resignation without prejudice. The teacher sued the school district for breach of contract. Her action was dismissed. On appeal this decision was affirmed.

The court found that the district's maternity leave policy was in full effect when the teacher accepted the probationary teaching contract and the contract was therefore subject to the regulation regarding maternity leave. Since her child's first birthday was well after the start of the next school year, her contract was properly cancelled, held the court. The court found no vagueness, indefiniteness, or ambiguity in the rule, as the teacher contended. In reality, said the court, the contract never came into being because by virtue of her pregnancy, the teacher was ineligible to enter the contract at the very moment she accepted the board's offer.

The teacher contended also that she was wrongfully deprived of a hearing before the school board on the question of her dismissal. Statute and case authority did provide for notice and hearing prior to summary discharge of a teacher, the court said. But since the employment contract was properly cancelled before the teacher assumed her teaching functions, she never became a teacher within the purview of the statute and thus her dismissal was not subject to its requirements.

Illinois

Riley v. School District 124 in the City of Evergreen Park, Illinois
221 N.E. (2d) 424
Appellate Court of Illinois, Fourth District, Fourth Division, September 16, 1966.

A junior high-school teacher who had taught in 1956-57 sued for breach of contract, alleging that his school district wrongfully refused to allow him to teach pursuant to their contract for the 1957-58 school year. In February or March 1957, the teacher applied to Naval Officer Training School and left for active duty in June, at which time the school district was notified of his movements. In July the superintendent of schools requested his resignation and the teacher promised to submit it upon receipt of all compensation due him. The school board mailed a check which it alleged represented completion of full compansation, but the teacher denied that it was for the correct amount and allegedly returned it, although the check was never cashed or found. Count one of the teacher's complaint demanded the full compensation owed him for his services in 1956-57. In count two, the teacher alleged that he reported to school in August 1957 to tender performance, but the district refused to let him teach and was thereby in breach of contract.

As to count one, the appellate court upheld the findings of the trial court and its judgment in favor of the teacher for $490, the amount owed to him for his work during 1956-57.

On count two, however, the court ruled against the teacher, and held that there was no breach of contract because by law no teacher could lawfully teach unless he registered his teaching certificate before beginning to teach. The teacher did not so register. The teacher argued that registration had been obviated by the fact that he had never really begun to teach in 1957-58 because the school board did not let him. But the law required teachers to register their certificates before even beginning to teach and since the teacher had not done so by the first day of school, he did not comply and was precluded from contractual recovery. In light of its decision on this issue, the court felt it unnecessary to reach the question of whether the teacher abandoned his contract in joining the Navy or whether his resignation was effected.

Iowa

Luse v. Waco Community School District of Henry County
141 N.W. (2d) 607
Supreme Court of Iowa, April 5, 1966.

A school superintendent sued the school board to recover $11,600 in unpaid salary under his employment contract for the balance of the 1962-63 school year and for the entire 1963-64 school year. As a defense, the board claimed that the contract was terminated by mutual agreement when it accepted his oral resignation.

The superintendent had been employed under a written contract for the school year July 1, 1962, to June 30, 1963. He testified that on April 12, 1963, his contract was extended to

June 30, 1964. Both the school district's copy and his copy of this contract which was at variance with the school district copy were admitted into evidence. The superintendent testified further that at a special board meeting held on May 20, 1963, to canvass election returns to fill a board vacancy, there was conversation about a resignation from him and he promised to word and submit one the following day; that he did write out a resignation that same evening dated May 21, 1963, to be effective on June 30, 1964, and delivered it to a board member on May 28, 1963. Between May 28, 1963, and June 12, 1963, he performed some of his duties as superintendent. A temporary officer was appointed by the board on June 7, 1963. On June 11, 1963, the superintendent received a notice to return school property in his possession. He did so under protest that he was still under a legal contract as superintendent. On July 15, 1963, the board employed a new superintendent under a contract term from July 1, 1963, to June 30, 1964.

The trial court found that the superintendent did not orally resign at the special meeting on May 20, 1963, that his contract had been continued to June 30, 1964, and awarded him the full salary claimed to be due. On appeal, the school board contended that there was insufficient evidence to support the findings of the trial court, and claimed that there were other errors justifying a reversal of the judgment in favor of the superintendent.

The appellate court held that there was substantial evidence to support the trial court's finding that the superintendent did not resign by mutual oral agreement. The evidence, including testimony of board members and the school board's minutes, the court said, supported the findings that the superintendent's contract was continued to June 30, 1964, that no agreement had been reached at the special meeting on May 21, 1963, that the resignation would be effective immediately or on the effective date of the resignation, and that a written statement of resignation by the superintendent was necessary.

Another issue on appeal was mitigation of damages. The school board claimed that the trial court erred in holding that it must affirmatively allege mitigation and in finding that the board failed to carry the burden of proving this defense. Under Iowa law, the school board could not prove mitigating circumstances unless the defense was pleaded, except such as grew out of the superintendent's testimony. The board did not plead the defense, and no testimony other than the superintendent's was introduced. He testified that he asked for a release from the board so that he could seek other school employment, but the only release tendered was one in settlement of all claims against the school district. Without a release, the superintendent was prohibited by statute from entering into another valid contract, and this statutory requirement was known to the school board. There was no evidence that the superintendent had been offered any job or had refused any offer. The only evidence that might have been considered detrimental was that the superintendent did not get in touch with the state department of education about a position. The court held, as did the trial court, that this evidence did not establish a failure by the superintendent to mitigate damages.

Other claims by the school board as to trial court errors, including improper admission of evidence, incorrect findings, and failure to grant a longer continuance of the trial were unavailing. The court found that there were no prejudicial errors to justify a reversal of the trial court.

Kentucky

Board of Education of Pendleton County v. Gulick
398 S.W. (2d) 483
Court of Appeals of Kentucky, January 21, 1966.

In January 1961, the school board employed the superintendent for a four-year term running from July 1,1961, to June 30, 1965, at an annual salary of $7,200. In June 1964, one year before his term ended, a majority of the board entered an order employing the superintendent for another four-year term, commencing July 1, 1964, and ending June 30, 1968, at an annual salary of $7,700. Two of the three board members voting for this order were defeated in the November 1964 board election.

In a declaratory judgment action by the successor board against the superintendent, the trial court upheld the order for the second four-year term. The successor board appealed.

The applicable statute provides that the appointment of a school superintendent may be for a term of one, two, three, or four years. The school board argued that once a term was fixed, the board has no authority to change its expiration date to create a term differing from that originally fixed. The superintendent, however, contended that the board has authority to change the length of the term as well as the date of its beginning at any time it wishes.

The court concluded that while under the statute the school board had a choice in the length of the employment term to be fixed, once the length of the term has been fixed, the board loses control over the term thus created. Therefore, the board was without power to create a new term of employment for the superintendent before the end of and out of the previous term. To conclude otherwise, the court said, would make it possible for a superintendent in one way or another to secure votes of the majority board members, splice terms, and perpetuate himself in office indefinitely, thereby defeating the right of the people to indirectly select a superintendent.

The court stated that by reaching this conclusion, it did not intend to imply that a school board may not change the length of the term of a superintendent. However, the change must be made within a reasonable time before the end of a term and in a manner not to disturb a term theretofore established.

The judgment was reversed with directions to enter another one consistent with this opinion.

Massachusetts

Minnich v. Town of Nantucket
216 N.E. (2d) 427
Supreme Judicial Court of Massachusetts,
Nantucket, April 29, 1966.

The question in this appeal was whether a town, acting through its school committee, had exceeded its statutory authority in entering into an employment contract with the school superintendent. In June 1962, the superintendent was appointed under a one-year contract with one-year notice of termination. In April 1963, he was reappointed on the same terms for the school year 1963-64. In March 1964, he was notified that his services would be terminated in June 1964. The superintendent brought suit claiming that he was entitled to salary to March 1965, one year from his date of notice. A lower court had ruled against him on the ground that the town had exceeded its statutory authority. On appeal, the decision was affirmed.

The power of a school committee to employ a superintendent was controlled by a statute enjoining every school committee from employing superintendents other than from year to year, except where the superintendent had served as such for three consecutive school years. Since the superintendent did not have the requisite three years of service as superintendent, the court held that his notice of termination of service was proper and he was not entitled to an extra year's salary.

Mississippi

Miles v. Cox
184 So. (2d) 869
Supreme Court of Mississippi, April 4, 1966.

(See Teacher's Day in Court: Review of 1965, Madision County Board of Education v. Miles, p. 17.)

In an earlier decision, the court had ruled that the principal had been wrongfully ousted from his position under his three-year contract and was entitled to reinstatement. In these proceedings, the principal asked for the issuance of a writ directing the school board to issue him a pay certificate for the salary due him under the contract with the school district. Following the principal's ouster, there was a lapse of time during which he pursued his legal remedies. By the time his right to reinstatement was vindicated in court, most of the contract term had expired. He filed his petition for salary without delay, and before the final expiration date of the contract. By the time it was heard on appeal, the contract term had ended.

Since under the judgment in the former action the principal's right to reinstatement as of the time of his wrongful ouster was established, the court ruled that under that decree, the payment of his salary under his contract became a fixed obligation of the school district. The fact that another person may have been placed in the principal's position and paid a salary was immaterial. The principal was entitled to a writ to require the school superintendent to issue a pay certificate for the salary due him, and payment should be made forthwith from the first money which may become available to the district, exclusive of bond and interest sinking funds.

Montana

Wyatt v. School District No. 104, Fergus County
417 P. (2d) 221
Supreme Court of Montana, July 21, 1966.

The teacher contracted with the school district to teach for the school year 1962-63 at a salary of $3,600 plus rent-free living quarters. She taught from September 4 to October 10, 1962, the day on which she received a letter dated October 8, 1962, from the school board purporting to dismiss her for incompetence. The teacher left the community and got a job elsewhere as a substitute teacher in December 1962, averaging one work day per week for the balance of the school year. The school board had offered the teacher a hearing on January 22, 1963, but she declined and requested an earlier one. This request was denied. The teacher then sued for wrongful breach of contract.

The court held the dismissal of the teacher was void because the school board failed to follow the law in dismissing her. Therefore, the teacher was entitled to damages in a sum equivalent to the benefits which she lost as a result of her dismissal.

Fundamentally, a school board, like any other administrative body, is required to follow the law, meaning that none of its business is valid unless transacted at a regular or special meeting. The record in the case showed, however, that the school board held no special or regular meeting prior to summarily discharging the teacher. Thus, no form of legal procedure existed from the beginning.

The court considered the principal issue to be the measure of damages to which the teacher was entitled. The board contended that if any damages were due, it was the balance due the teacher under her contract less the amount that she earned elsewhere. The court concluded that the teacher should receive a sum which, when added to the benefits already received under the contract, would give her an economic status identical to that which she would have enjoyed had the contract been performed. In other words, the teacher was entitled to damages equivalent to the actual loss she sustained, be it loss of benefits or advantages or expenses which would reasonably result from complete performance on her part. The loss of rent-free living quarters was an example of recoverable loss, as it was a natural consequence of the contract's breach. So were her pension plan and vacation time, these being inducements to continue loyal services to the school board. The expenses that the teacher incurred in seeking other employment were also held recoverable, since she exercised ordinary diligence to procure employment to mitigate damages. But her initial trip to Montana to begin work for the school board could not be recovered, since she would have done this anyway, even if the contract had not been broken.

The jury award of $1,500 to the teacher was upheld as not excessive and an additional $57 was further allowed as a travel item.

Nebraska

Lee v. Ralston School District, Douglas County
145 N.W. (2d) 919
Supreme Court of Nebraska, October 28, 1966.

The superintendent contracted with the school district for a three-year employment term, starting July 1, 1961. On January 21, 1963, the school district relieved him of his duties on the ground that he had obtained other employment. The superintendent sued for breach of contract, demanding payment to the end of the contract period. The district denied that any amount was due the superintendent and counterclaimed for payments already made. The other employment was service as a recruiting officer for the Naval Reserve in Omaha. The superintendent testifed that he did not keep regular hours while on naval duty. His work consisted mostly of preparing mail for prospective recruits, arranging interviews, and talking to parents. Most work was done on weekends. He insisted that he was still able to perform all his duties as superintendent.

The court held that the action of the school district was equivalent to dismissal or discharge of the superintendent and that it had failed to prove that the discharge was for cause. But the court also found that the superintendent's employment as a naval officer after his discharge was not merely part-time work and was inconsistent with the performance of a school superintendent's duties. Thus, while the district was not entitled to retain the entire amount remaining due under the contract, it was entitled to reduce the amount it owed the superintendent by reason of his earnings while on naval duty to the extent that such duty was not consistent with his duties as school superintendent.

New Jersey

Thomas v. Board of Education of the Township of Morris
215 A. (2d) 35
Superior Court of New Jersey, Appellate Division, November 16, 1965; decision affirmed, 218 A. (2d) 630, Supreme Court of New Jersey, April 4, 1966.

(See page 26.)

New Hampshire

Spencer v. Laconia School District
218 A. (2d) 437
Supreme Court of New Hampshire, Belknap, March 30, 1966.

A teacher was employed under a three-year contract starting September 15, 1962, and was assigned the first year to work as a kindergarten teacher.

On April 15, 1963, the teacher was notified of her salary for the 1963-64 school year. Because of a projected reduction in city appropriation for schools, the school board voted on August 6, 1963, to discontinue kindergartens for the next school year, and the next day notified the teacher that her position was abolished for lack of funds. Later, the teacher was advised that no teaching work of any kind would be available to her for the coming school year. She then sued to recover unpaid salary for the remaining two years of the contract. The contract provided that the school district could terminate the contract in accordance with a statutory provision that a school board may dismiss a teacher found to be immoral or incompetent or who failed to conform to regulations prescribed. Under this statute, a teacher could not be dismissed without first being notified of the cause, nor without having been granted a hearing. Another paragraph in the contract provided that the contract could be cancelled by either party as of June 30 of any year upon written notice not later than April 15.

In arguing the case before the court, the parties agreed that the board's action constituted a dismissal of the teacher without her consent. The questions presented were whether the dismissal violated the statute; and if so, whether the board was entitled to deduct from the damages, the compensation the teacher earned from other employment during the contract term.

The teacher argued that the statute precluded dismissal for causes other than immorality, incompetency, or failure to conform to regulations. The board maintained that the statute was limited to dismissal for causes personal to the teacher, and did not apply when dismissal was for reasons of economy.

In the light of the legislative history of the statute, the court held that the teacher could be dismissed only for causes specified in the statute, and, therefore, the dismissal for reasons of economy violated the statute. Further, in arriving at the board's liability for damages under the words in the statute "to the extent of" full salary for the contract term, the board was entitled to have deducted from the salary due, the teacher's earnings from other employment after her dismissal.

Another question before the court was whether the paragraph in the contract that either party could cancel the contract as of June 30 of any year by giving written notice not later than April 15 was invalid as in conflict with the tenure law which provides that any teacher who has taught for one or more years in a school district be notified in writing on or before March 15 if the teacher is not to be renominated or re-elected. The court held that the contract provision was invalid. In so concluding, the court said that the inconsistency between the contract provision and the statute is more fundamental than a mere discrepancy in the date of the required notice. The legislation was designed in part to afford greater security to the teacher, and intended that the issue of renomination should not be left solely to the decision of the local authorities.

New York

Widger v. Central School District No. 1 of the Towns of Ellicottville, Great Valley, East Otto, Franklinville, Humphrey and Mansfield, Cattaraugus County
219 N.E. (2d) 425
Court of Appeals of New York, July 7, 1966.

(See Teacher's Day in Court: Review of 1965, p. 17; Review of 1964, p. 20.)

A teacher brought an action based on tort and breach of contract as a result of the school district's suspending him without a hearing on the charges against him. The damages were said to be sustained from January 26, 1962, to April 22, 1963, when notice of claim was served. The teacher sought damages for lost wages, disrepute, and mental suffering. His first complaint was dismissed with leave to replead for failure to allege that 30 days had elapsed between filing notice of claim and starting the action, as required by statute. A second complaint was served with the correct allegations. The school district moved to dismiss on the ground that the suit was commenced before expiration of 30 days after filing notice.

The court denied the motion. The second complaint was held to have stated valid causes of action because at the time it was served both the period in which notice of claim was filed and the 30-day period in which the claim could have been set out had passed. Also, the notice of claim sufficiently informed the school district of the nature of the claim and of the time when, place where, and manner in which the claim arose.

Ohio

State ex rel. Harper v. Board of Education of Bath-Richfield Local School District
218 N.E. (2d) 616
Supreme Court of Ohio, June 29, 1966.

A teacher was employed under a contract for the school year 1964-65. His school district had an executive head who administered and executed board policies. In the spring of 1965, the executive head, although not a member of the local board of education, told the teacher that his employment would be terminated at the end of the school year when his contract expired. The school board and superintendent had agreed not to rehire the teacher and confirmed the action of the executive head.

The teacher brought an action to compel the board to issue him another limited contract of employment for the school year 1965-66. He claimed he was entitled to re-employment and was "deemed re-employed" under a statute that provides that a teacher employed under a limited contract, and not eligible to be considered for a continuing contract is, at the expiration of such limited contract, deemed re-employed unless the employing board, acting on the superintendent's recommendation gives such teacher written notice of its intention not to re-employ him.

Since the statute requires that the superintendent make recommendations to the board and that the board notify the teacher, the question was whether the executive head of the local school district may act as agent of the board.

The court held that the procedure used by the school officials was valid, and the teacher's action for re-employment was denied. In so holding, the court upheld the right of a school board to subdelegate to an executive head agency duties that were mechanical and ministerial, such as communicating recommendations of the superintendent and school board not to re-employ teachers, and to receive communications on behalf of the board. The executive head's written notice to the teacher was such an agency duty, since the board had theretofore considered the matter and advised him of their decision.

Texas

Russell v. Edgewood Independent School District
406 S.W. (2d) 249
Court of Civil Appeals of Texas, San Antonio, July 27, 1966; rehearing denied, September 21, 1966.

(See page 20.)

Wyoming

Sorenson v. School District No. 28, County of Big Horn, State of Wyoming
418 P. (2d) 1004
Supreme Court of Wyoming, October 21, 1966.

The teacher was dismissed from his teaching duties in September 1964. He sued his school district for breach of contract. The trial court found that the termination of the teacher's contract was arbitrary and an abuse of discretion, but it held the teacher not entitled to damages because he did not hold a teaching certificate after September 1964, as required by law. After the trial, the teacher produced a certificate authorizing him to teach from September 1964 to September 1969, and argued that the certificate was previously withheld from him as a result of the issuing authority's misfeasance, for which he should not be punished, and that the public interest would best be served by interpreting certification requirements liberally. On this basis the teacher appealed from the trial court decision, but that decision was upheld.

The appellate court cited authority that payment of salary to a teacher who has no certification is unauthorized and no reason was found in the present case to disturb that authority. From the teacher's own evidence at the trial, the trial court was entitled to find that the certificate was not issued for any school years after September 1964. It had sufficient reason, therefore, to find the teacher not to be certified and thereby not entitled to contract damages, regardless of evidence adduced after trial.

TENURE

Alaska

Spicer v. Anchorage Independent School District
410 P. (2d) 995
Supreme Court of Alaska, February 14, 1966.

The teacher had been employed by the school district for the school years 1960-61 and 1961-62. On March 14, 1962, the school superintendent sent the teacher a letter notifying him that on the previous day the school board had approved his contract for 1962-63. The letter indicated what the annual salary would be, and contained space at the bottom for the teacher's signature of acceptance or rejection of the contract offer. The teacher signed the blank accepting the offer, and returned the letter. On May 23, 1962, however, the school superintendent wrote the teacher that the school board had rescinded its March 13, 1962, offer of employment and that the teacher would not be issued a contract for 1962-63.

The teacher then brought an action seeking damages for breach of contract, and for a declaratory judgment that he was entitled to the benefits of the teacher tenure law. The trial court decided against the teacher on both counts and an appeal followed.

On appeal the teacher contended that the letter of March 14, 1962, amounted to an employment contract offer by the school board which became a binding contract when he filled in the blank at the end with the word accept and signed his name, and that the later letter was an unjustified repudiation of the contract entitling him to recover damages. The school board contended that the March 14, 1962, letter with the teacher's endorsement was at best only a preliminary indication of the future intentions of the parties, and no binding contract would come into existence until the terms were reduced to writing and signed by the teacher and two board members as required by regulations of the state department of education.

Alaska school boards are authorized by statute to hire teachers in accordance with rules and regulations of the state department of education. Under these regulations, all teachers' contracts must be signed by the teacher and at least two board members and must contain certain provisions, including its term in school days, annual salary and number of payments, a statement of citizenship, a non-communist oath, and authorization for retirement system deductions, and provision for termination in certain instances.

The court held that there was no employment contract for the 1962-63 school year between the teacher and school board. The school board had no authority to employ teachers except as prescribed by statute and regulations of the state department of education. Since the requirements of a written contract with the necessary provisions and proper signatures had not been met, no contract came into existence. The March 14, 1962, letter, the court said, did not amount to a contract because it lacked the required provisions and was not executed by two school-board members.

On the tenure issue, the teacher contended that with the signing of his contract on May 23, 1961, for his second year, he had been "employed for at least two school years in the system", within the meaning of the teacher tenure law, even though the service for the two years was not yet completed. Therefore, he was entitled to notice of nonretention on or before March 15, 1962, as required by the tenure law, and since this notice was not given until May 23, 1962, his contract for 1961-62 automatically continued into the next school year.

The court construed the clause in the tenure law that a teacher "who has not been employed for at least two years" to mean that a period of two years as a teacher must have expired before he becomes eligible for tenure benefits. Under this interpretation, the two-year period did not expire until the end of the school year in May 1962. Consequently, the teacher was not entitled to the benefits of the tenure law on March 15, 1962, and failure to give him notice of nonretention before that date did not continue his contract for another year.

Arizona

Johnson v. Board of Education for Phoenix High School District
419 P. (2d) 52
Supreme Court of Arizona, October 19, 1966.

(See page 14.)

Williams v. School District No. 40 of Gila County
417 P. (2d) 376
Court of Appeals of Arizona, August 2, 1966.

A teacher with tenure sought review of the action of his school board in dismissing him on grounds of public misconduct. The teacher was given notice and a hearing on charges of disturbing the peace, being under the influence of intoxicants, attempting to fight, and displaying a gun.

The facts were that one evening the teacher and a female companion visited a bar to drink beer and socialize. Two men made advances during the evening. Later, in the parking lot, the teacher and the men had an altercation during which he drew a handgun and the men a knife. The teacher was arrested, and was charged with a criminal complaint.

The school district required its teachers to "adhere to any reasonable pattern of behavior accepted by the community for professional persons." The question here was whether there was good and just cause to dismiss a tenure teacher under these circumstances. The court believed that there was ample evidence to sustain the district's position, and it concluded that there was no abuse of discretion.

The teacher also contended that the trial court erred in admitting into evidence a portion of the Grade School Employees' Handbook outlining rules of teacher conduct outside the school. Since both the teacher and the school district were familiar with these rules, the court held that the trial court did not err in admitting the handbook into evidence.

Judgment in favor of the dismissal was affirmed.

California

Parker v. Board of Trustees of Centinela Valley Union High School District of Los Angeles County
51 Cal. Rptr. 653
District Court of Appeal, Second District, Division 2, California, June 2, 1966.

A probationary teacher was notified that she would not be re-employed for the next school year. She requested and received a hearing before the school board. Thereafter the teacher received a document setting forth the board's findings of fact and conclusions with notice of the final decision not to rehire her. The teacher then asked that a record of the proceedings be prepared. This the board was willing to do if the teacher paid for the expense of the transcript, but the teacher insisted that the board pay for it. No record was prepared.

The teacher filed a petition of mandate in the superior court, setting out three causes of action, one in the nature of a complaint for declaratory relief, asking for a trial de novo to determine her status.

The school board filed a general demurrer to the teacher's petition which the superior court sustained on the ground that it was not filed within the time limit required by the statute. An appeal from this judgment followed.

Under the existing tenure provisions, a school district could dismiss probationary employees for cause only, which shall relate solely to the welfare of the schools and the pupils. The board's determination of the sufficiency of the cause for dismissal shall be conclusive and shall not be subject to judicial review. These provisions have been judicially interpreted to permit a court review to determine whether the board proceeded in excess of its jurisdiction, whether the proceedings were fair, and whether the board's findings of fact are supported by substantive evidence.

The court ruled that the teacher's petition was timely filed. Further, that the allegations therein that the board's findings and the decision not to rehire her were not supported by the evidence, that there were procedural irregularities in the hearing and abuse of discretion, and that the decision was based in part on matters improperly received and not in evidence at the hearing, were sufficienct to state a cause of action for a writ of mandate for a court review.

The court made it clear that if the teacher wished a transcript of the record of the board proceedings, she was to pay for the cost of its preparation.

Judgment dismissing the cause of action for declaratory relief was affirmed. The court held the teacher was not entitled to a trial de novo on the issue of her discharge since an action for declaratory relief is not appropriate for review of an administrative order.

Raney v. Board of Trustees, Coalinga Junior College District
48 Cal. Rptr. 555
District Court of Appeal, Fifth District, California, January 7, 1966.

The services of the probationary junior-college teacher were terminated after due written notice at the end of his third year of employment. At the teacher's request, the board furnished him with a formal accusation and a hearing as required under the tenure law. The board then made findings of fact and rendered its decision not to re-employ the teacher. The findings were that the philosophy of the teacher with respect to grading was unsuitable for the junior-college level and contrary to the school's administrative practices in that his tough attitude toward students and his severity of grading resulted in course failing or drop-outs; that the teacher was ineffective as a counselor, the capacity in which he was originally employed, because of poor rapport with his students, which necessitated his reassignment to classroom work; and that he had a general reputation among faculty, students, and teachers as being a contentious person, and that this reduced his effectiveness as a teacher.

The teacher applied to the court for an order directing his reinstatement and for back salary for the 1964-65 school year.

Under the tenure law the school board's determination as to the sufficiency of the cause not to re-employ a probationary teacher shall be conclusive, but the cause shall relate solely to the welfare of the schools and their pupils.

The trial court found that the school board's findings of fact were supported by substantial evidence in the light of the whole record and that the board's reasons for not re-employing the teacher related solely to the welfare of the school and to its pupils.

This decision was upheld on appeal. Since there was substantial evidence before the school board supporting its findings, the court held it could not interfere with the school board's judgment not to rehire him. The court had no power to substitute its own judgment of the character and ability of the teacher, or his worthiness as a teacher, nor did it have power to pass judgment on the sufficiency of the cause for dismissal.

Stanton v. Dumke
49 Cal. Rptr. 380
Supreme Court of California, In Bank,
February 23, 1966; rehearing denied, March 22, 1966.

(See Teacher's Day in Court: Review of 1965, p. 20.)

Two college teachers sought a writ of mandamus ordering the Chancellor of the State Colleges of California, the President of San Jose State College, where they had been employed, and the Trustees of the State College of California, to restore them to the San Jose College Faculty. Their petition was dismissed without leave to amend, and an appeal was taken.

Both teachers had been employed on a yearly basis for three years through June 30, 1962, and would have acquired tenure if they had been re-employed for a fourth year. In accord with statutory requirements, the college president notified them on April 5, 1962, that they would not be re-employed. The teachers alleged that failure to rehire them was based upon non-academic reasons, such as their participation in uncovering an asserted secret agreement of state college presidents to exclude Southern sit-in students from the California state colleges, and their membership in and activities on behalf of a teachers union. The teachers had been accorded an administrative hearing in July and August 1962, after which the chancellor sustained the decision of the college president not to rehire them.

Prior to 1961, a section of the Education Code provided that members of the teaching staff of each state college shall be appointed by the director of education, subject to the approval of the state board of education only upon recommendation of the college president. This provision was repealed. A new section was added which vested in the trustees of the state college systems all the powers heretofore vested in the state board of education or the state director with respect to the management, administration, and control of the state colleges. Other new sections provided that all academic and administrative positions filled by the trustees on and after July 1, 1961, shall be filled by appointment made solely at the discretion of the trustees, pursuant to rules adopted by the trustees. To provide the law to be applied to the tenure rights and benefits of academic employees during the interim period, July 1, 1961, to July 1, 1962, at the end of which time the rules adopted by the trustees would become effective, the legislature provided that probationary teachers retained any rights which they had accrued prior to July 1, 1961. The trustees by regulation continued in effect the same system of appointment and retention used by the state board of education. Under this system, the trustees made appointments for a year on recommendation by the president of the college submitted through the chancellor.

Based on these statutory changes, the court ruled that no error was shown in the procedures followed when the probationary teachers were not reappointed for a fourth year. The teachers had retained any rights which had accrued to them prior to July 1, 1961, and no new rights were bestowed on them after that date. The favorable recommendation of the college president was no longer a statutory requirement to appointment, and they were given no right to require that during the interim period, the board of trustees appoint them for a fourth year, or independently exercise a discretion on the appointment in the absence of the president's favorable recommendation.

The court held further that the teachers failed to state a cause of action on the claim that they were not re-employed for a fourth year for nonacademic reasons, since the record of the hearing accorded the teachers fully supported the chancellor's conclusion that neither their union activities nor their participation in uncovering the alleged secret agreement of college presidents to exclude certain students from the colleges contributed to the decision not to re-employ them. There was nothing in the record, the court said, to warrant the conclusion that the decision not to rehire these two teachers was based on other than the customary academic and professional reasons.

Nor was there any error in granting summary judgment against one of the teachers on the ground that his grievance had become moot. Since it was undisputed that by letter dated June 25, 1962, he had resigned from the college as of the end of the 1961-62 academic year, he was in no position to complain of failure to rehire him for another year, or to bring proceedings to compel his rehiring.

The judgments appealed from were affirmed.

Colorado

Maxey v. Jefferson County School District No. R-1
408 P. (2d) 970
Supreme Court of Colorado, In Department, December 20, 1965.

(See page 10.)

Florida

Motley v. Board of Public Instruction of Okaloosa County, Florida
180 So. (2d) 507
District Court of Appeal of Florida, First District, November 23, 1965.

The teacher petitioned the court for a writ of certiorari seeking a review of a purported administrative ruling of the state school superintendent relative to a dispute over a continuing contract between the teacher and the county school board. The county school board asked the court to dismiss this petition because it showed on its face that the state board of education had never rendered a decision on an appeal taken by the teacher to that board.

The teacher had construed two writings as an administrative ruling. One was a letter to the teacher from the state school superintendent informing the teacher that legal counsel had advised the state superintendent that the matter in dispute could not properly come before the state board of education for review because the teacher had already taken the matter to court. The second writing was a memorandum to the state school superintendent from an assistant attorney general wherein he concluded that the teacher, by electing a legal remedy, had divested himself of further administrative consideration, and, therefore, his application for appeal to the state board of education should be denied.

A section of the Florida teacher tenure law dealing with dismissal of an instructional staff member provides in part that an employee may appeal in writing an adverse decision to the state department of education through the state school superintendent. A separate statute provides an alternative procedure for judicial review through certiorari from final orders of a state agency.

The court held that the contents of the writings which the teacher construed as an administrative ruling did not constitute a final order of the state board of education as contemplated under the statute providing the alternative procedure for judicial review. The motion to dismiss the teacher's petition was granted.

Motley v. Board of Public Instruction of Okaloosa County, Florida
190 So. (2d) 815
District Court of Appeal of Florida, First District, October 4, 1966; rehearing denied, November 2, 1966.

The teacher petitioned the court for a writ of certiorari to review the order of the state board of education affirming the decision of his local school board which refused to rescind its action accepting the teacher's resignation. The court held that the decision was supported by substantial evidence and denied the writ of certiorari.

Muldrow v. Board of Public Instruction of Duval County
189 So. (2d) 414
District Court of Appeal of Florida, First District, August 18, 1966.

A teacher appealed an order of the lower court denying his petition for a writ of certiorari to review the board's decision dismissing him for insubordination, a ground for dismissal under the Duval County teacher tenure law. The dismissal followed a full hearing at which the teacher was represented by counsel.

On appeal it was argued that a finding of "gross insubordination" was necessary as was required under the state statute. The court ruled, however, that the applicable local tenure act which required only "insubordination" superseded the state statute.

The appellate court found that the school board's determination that the teacher was guilty of insubordination was based on competent substantial evidence. Accordingly, it affirmed the judgment denying the teacher's petition for a writ to review the dismissal.

Sauls v. De Loach
182 So. (2d) 305
District Court of Appeal of Florida, First Division, January 18, 1966; rehearing denied, February 14, 1966.

After notice of non-re-employment for 1964-65, statement of charges and a hearing granted the tenure teacher pursuant to the Volusia County teacher tenure law, the county school board decided not to re-employ the teacher. The state board of education affirmed the decision on appeal.

The teacher petitioned the court for a writ to review the decision, claiming alleged violation of his rights in the hearing proceedings.

The court held that there was competent, substantial evidence by which the state board of education could have found that the alleged violation involving sequestration of witnesses did not prejudice the teacher's rights. In denying the writ on the ground that the teacher was not denied essential rights, the court said that strict rules of evidence followed in formal court actions do not govern in proceedings before administrative bodies.

Illinois

Wade v. Granite City Community Unit School District Number Nine, Madison County
218 N.E. (2d) 19
Appellate Court of Illinois, Fifth District, May 17, 1966.

A probationary teacher was notified by letter dated March 28, 1963, that he would not be re-employed after June 7, 1963, the close of the school year, because his certificate did not meet the school district requirements for fulfillment of his position. The teacher complained that the notice did not comply with the tenure statute providing that any teacher who had been employed as a full-time teacher for two consecutive school terms could continue service unless given written notice of dismissal stating the specific reason for his dismissal. He sued for a declaratory judgment to determine the validity of the notice of dismissal. The court held that the notice was sufficiently specific to meet statutory requirements and was valid.

The court defined "specific reason" to mean that it must fairly apprise the teacher of the alleged deficiency on which the school board based its action and with sufficient specificity to enable the teacher to refute the charge. The notice given the teacher advised him that his employment was terminated because his certificate did not meet the district's requirements. The teacher made no issue of whether his certificate did in fact meet such requirements or whether the requirements were reasonable or established by appropriate school-board action. Certificate requirements were held to be a sufficiently specific reason under the statute, and the teacher's non-re-employment for not fulfilling the requirements was upheld.

Kentucky

Knox County Board of Education v. Willis
405 S.W. (2d) 952
Court of Appeals of Kentucky, May 13, 1966.

After a hearing on the charges, the school board terminated a teacher's contract on grounds of "inefficiency, incompetency and neglect of duty." Specifically, the teacher was accused of inadequate class conduct, lack of control and discipline over her pupils, and permitting them to destroy classroom furniture.

The teacher challenged the board's decision on grounds of arbitrariness in that the board failed to furnish the teacher with rules and regulations governing procedure in conducting the hearing. The court found no statutory requirement of formal procedural rules for the conduct of a hearing. A board was not required to draft a comprehensive code of procedure for hearings on termination of a teacher's contract. For if such code failed to cover a single phase of procedure sought to be invoked, the board could not proceed. A proper hearing requires simply an orderly procedure and fundamental fairness. Therefore, the court considered the teacher's plea for requiring technical rules of procedure to be merely academic. The teacher made no claim that the hearing was unfair, that she was denied a right to be heard or was prejudiced in any manner. The court thus found nothing illegal or arbitrary in the conduct of the hearing without written rules of procedure.

The court found that the board did act arbitrarily in sustaining charges that the teacher did not keep records properly and that she was not given fair notice of this charge. However, since the board did sustain two other charges against her with adequate notice and substantial supporting evidence, the dismissal was upheld.

The teacher insisted, nontheless, that she was not correctly notified of charges of class disorder and lack of discipline, the board charges which the court upheld. The board's notice to the teacher contained a supervisor's report setting forth details of the charges. Although this report was somewhat informal, the court held that it adequately apprised the teacher of the charges against her.

Louisiana

State ex rel. Charbonnet v. Jefferson Parish School Board
188 So. (2d) 143
Court of Appeal of Louisiana, Fourth Circuit, May 18, 1966; rehearing denied, July 5, 1966.

A principal with tenure status was removed from his position by the school board solely on the basis of a letter from the school superintendent recommending the removal. The removal was without prior written notice, statement of charges, and a hearing as required by the teacher tenure law. The principal filed suit for reinstatement to his position as principal until the board had complied with the provisions of the tenure law.

The district court ordered his reinstatement and issued a temporary injunction against his removal until the board had complied with the tenure law, particularly the hearing provisions. The school board then assigned the principal to the position of supervisor of child welfare without first rescinding his dismissal from the position of principal. At the hearing for a permanent injunction, the board maintained the new assignment was to a position of rank, dignity, and equal pay to that of principal. The district court, however, ruled that the principal had been improperly removed from his position as principal and ordered reinstatement to his position as principal until a hearing was held. This judgment was upheld on appeal by the school board.

The appellate court held that the school board had no right to remove the principal from his position for alleged incompetence without first giving him formal written charges and a hearing as required by the tenure law. Although the school board has the right ordinarily to transfer the principal to another position of equal rank, dignity, and compensation, such appointment, the court said, did not make moot his removal from the position of principal on the ground of incompetency without formal charges and a hearing, because such removal would constitute a permanent degrading of the principal and a blot on his record. Therefore, the principal was to be restored to the position from which he was removed until he was afforded a hearing at which adequate proof was made of his alleged incompetency, or the charges were officially abandoned. The board would have the right thereafter to transfer him to any other position of equal rank, dignity, and compensation.

New Hampshire

Spencer v. Laconia School District
218 A. (2d) 437
Supreme Court of New Hampshire, Belknap, March 30, 1966.

(See page 18.)

New Jersey

Thomas v. Board of Education of the Township of Morris
215 A. (2d) 35
Superior Court of New Jersey, Appellate Division, November 16, 1965; decision affirmed, 218 A. (2d) 630, Supreme Court of New Jersey, April 4, 1966.

After screening some 40 applicants, the school board voted unanimously to hire the superintendent, and gave him a two-year contract of employment starting on February 1, 1961. Under its terms, either party could terminate the contract before the expiration date on 90 days' written notice.

On October 18, 1961, at a regular board meeting by a vote of 5 to 2, the majority bloc of five members passed a resolution which cancelled the two-year contract, and gave the superintendent a new three-year contract starting that day. This second contract had no termination notice provision. Its effect was to reduce the superintendent's probationary period from two years to 8½ months and to give the superintendent tenure employment. This action was taken without prior notice to the four other members of the board or the public. It appeared that the new contract had been privately discussed in advance by members of the majority bloc, and the resolution and new contract had been prepared in advance of the October 18, 1961, meeting. A statement praising the superintendent's accomplishments was read at the meeting. The two minority members present at the time of the vote protested the proposed new contract as premature.

None of the five members of the majority bloc was on the new school board which took over about four months later. Three were defeated for re-election and the other two resigned. The new board at its regular meeting on March 21, 1962, by unanimous resolution, declared the October 18, 1961, action on the superintendent's contracts to be contrary to public policy and invalid, and recognized the initial two-year contract running to February 1, 1963, as the only valid and subsisting contract. On June 21, 1962, the board in a unanimous decision exercised the 90-day notice clause in the initial contract and terminated the superintendent's employment.

On appeal, the state commissioner of education upheld the position of the local school board that the three-year contract was invalid and that the initial two-year contract was the only legal contract between the parties. The state board of education affirmed this determination, holding that under the circumstances presented, the October 18, 1961, action of the board was an abuse of discretion, arbitrary, and contrary to public policy. This decision was affirmed on appeal.

The court held that there was substantial creditable evidence in the totality of the facts and circumstances to support the decision of the state board. The action of the local school board represented by the dramatic change of board policy on the vital matter of tenure employment by reducing the superintendent's probationary period to 8½ months, the lack of prior notice of the proposed change of contract to the minority members of the board or to the public, and the lack of deliberation and opportunity to be heard led the court to conclude that the action of October 18, 1961, was not taken in good faith.

The New Jersey Supreme Court unanimously affirmed the judgment of the lower court. However, the court expressly reserved the question of whether the mere execution of the three-year contract of employment entered into between the superintendent and the school board, even if it had been a valid one, would have given tenure to the superintendent.

New York

Agresti v. Buscemi
273 N.Y.S. (2d) 388
Supreme Court of New York, Special Term, Suffolk County, Part I, September 9, 1966.

A teacher, who had been a probationary principal for two years and who was granted a sabbatical leave for her third year, sued for a court order establishing that she had obtained tenure as an elementary-school principal. The school authorities alleged that the teacher was warned that the sabbatical leave did not count toward tenure, but the teacher denied this and insisted that she was told that the sabbatical would not affect the running of the required three years of probation. The board contended that probationary service meant three years of actual service and not combinations of service and leave. It also brought out that her principal did not recommended that she be given tenure.

The court noted that the teacher had qualified herself for sabbatical leave, having rendered seven years of satisfactory service as a teacher, and that her request for the sabbatical was granted. Thus, she was given the leave and did not simply "take the year off." Furthermore, the school district policy was that sabbatical leave did not prejudice the teacher's other rights. Since she continued to receive a salary while absent, she did not leave her employment, even temporarily, and retained the status of continued employment for purposes of attaining tenure. And finally, she taught the year after the leave with the knowledge and consent of and payment by the school district. The court held that this factor estopped the school authorities from denying her tenure as an elementary-school principal.

Board of Education of City School District of City of New York v. Allen
264 N.Y.S. (2d) 813
Supreme Court of New York, Special Term, Albany County, December 1, 1965.

Thirteen school employees appealed to the state commissioner of education seeking an order to direct the New York City Board of Education to create and/or license the position of Administrative Coordinator ("600" School), to grant them permanent tenure, to establish a salary schedule and classification for such position, and to grant them such rights, privileges, and incidents that may pertain to this position. The commissioner ruled that since several of these employees had served more than three years in the positions in question, they were entitled to tenure.

The school board brought court proceedings to review this decision, contending that the commissioner's determination as to the right of tenure was made without authority, in that the tenure statute established the only way to obtain tenure of appointment to the positions in dispute. Another contention was that the commissioner violated the test he laid down in a prior decision. The commissioner asked the court to dismiss the board's petition on the ground that this was a matter of purely educational concern and not reviewable by the court. The court rejected this argument, saying that courts may determine whether the commissioner has acted arbitrarily or illegally on matters of purely education concern.

The motion of the commissioner to dismiss the board's petition was denied on the basis that the apparent inconsistency of the commissioner's decision with his prior decisions and the applicable statute may well be considered indicative that the decision under appeal is arbitrary or illegal. The commissioner was given time to serve his answer to the petition.

Glass v. Board of Education of City of New York
265 N.Y.S. (2d) 294
Court of Appeals of New York, October 28, 1965.

(See Teacher's Day in Court: Review of 1963, p. 27.)

The teacher started service as a substitute teacher of library in the school system in 1954. In June 1958, she took and ultimately passed an examination for license as a teacher of library in the secondary schools, and was issued a license in September 1959, subject to meeting certain conditions. One such condition, contained in the announcement for the examination, was that applicants meet all eligibility requirements by October 1, 1961. The teacher received a permanent appointment on October 26, 1960. In September 1962, the board of examiners ruled that the teacher had failed to meet eligibility requirements because she failed to submit proof of having completed 12 credits in education; therefore, her license was invalid and was terminated as of January 31, 1963.

The teacher brought court proceedings to annul the school board's decision terminating her license without a hearing and to be restored to her position. Court denied her application for relief and dismissed her petition. The Appellate Division reversed this decision, and granted the teacher the relief she requested. It held that the teacher had acquired tenure, and that her summary dismissal without a hearing on her failure to submit proof of timely completion of two required education courses of two credits each was improper.

On appeal, the school board contended that the teacher's license terminated by operation of law for failure to meet the eligibility requirements by the date set in the examination announcement.

The Court of Appeals affirmed the order of the Appellate Division and ruled that the teacher was entitled to a hearing as provided in the tenure law solely to determine whether she has the requirements for eligibility and tenure. In so ruling, the court said that a teaching license is a professional prerequisite to holding a permanent position.

Rosenberg v. Allen
258 F. Supp. 511
United States District Court, Southern District of New York, August 12, 1966.

A probationary teacher was informed that he would not be rehired for the next school year. The teacher brought suit charging that there was no legally sufficient reason for this decision and that he was the victim of a conspiracy because of his views on the United States's participation in the War in Vietnam. He alleged that termination of his employment violated his constitutional rights. He asked that a three-judge court be convened to declare unconstitutional the New York education law providing for summary dismissal of probationary teachers and others without notice, hearing, or reasons, and for an injunction against enforcement of the law. Unlike tenure teachers, probationary teachers by state law are not entitled to a hearing on dismissal charges.

The defendants, among them the president of the University of the State of New York, the local school superintendent, and the trustees of the local board of education, moved for summary judgment.

The court denied the teacher's request for a three-judge court on the ground that if he was attacking the constitutionality of the statute the attack was insubstantial and frivolous. And if he was attacking the statute's wrongful invocation, no three-judge court need be convened.

The court found nothing on the face of the statute to suggest that the legislature intended to confer on the boards of education the power to discharge probationary teachers for unconstitutional reasons. If this teacher's employment was terminated for his exercise of constitutional rights, such termination was not directly authorized by state law. For if a teacher was illegally punished by his school board, it did not necessarily follow that the statute authorizing such punishment was unconstitutional.

It appeared to the court that the real thrust of the complaint was that the teacher's employment was terminated because of his exercise of constitutional rights. This raised genuine issues of material fact which deserved to be tried. For this reason, defendants' motion for summary judgment was denied.

Van Heusen v. Board of Education of the City School District of the City of Schenectady, New York
271 N.Y.S. (2d) 898
Supreme Court of New York, Appellate Division, Third Department, July 7, 1966.

A tenure teacher had taught mathematics for three of his 16 years with the school district. After the three years of teaching mathematics, he was scheduled to supervise a study hall in place of the mathematics class. The teacher informed the school authorities that he did not want this assignment. After a conference with the superintendent and the assistant superintendent, and after he instituted local grievance procedures, the teacher's assignment still remained unchanged. He then sought redress through the courts, but his petition was dismissed for failure to state a cause of action. On appeal the judgment was affirmed.

The question was whether a teacher who had taught mathematics for several years might challenge the authority of school administrators to assign him to supervise a study hall instead. The teacher did not contend that study hall supervision was a nonteaching duty, but that his tenure was that of a mathematics teacher and the re-assignment infringed his tenure rights.

The court viewed this contention as untenable. The teacher's tenure, it said, was that of a secondary-school teacher only. Apart from such subjects as physical education, music, art, and vocational courses, tenure was not available according to subject matter but was descriptive of grade level--secondary school in the teacher's case. Therefore, the court held that no legal right of the teacher was violated. Nor did school authorities abuse their discretion, nor was the assignment to supervise study hall arbitrary and capricious.

Ohio

State ex rel. Brubaker v. Hardy
214 N.E. (2d) 79
Supreme Court of Ohio, February 9, 1966.

(See Teacher's Day in Court: Review of 1965, p. 32.)

The teacher had been employed by the school board for three successive years under annual contracts. In April 1963, he resigned from his position, effective at the end of the 1962-63 school year. The school board accepted the resignation which the teacher had never withdrawn. In June 1963, after the close of the school year, the board rescinded its acceptance of the resignation and granted the teacher a one-year contract for the 1963-64 school year, under which the teacher served. At no time after April 1963 was the teacher nominated for re-employment by the county superintendent.

On September 1, 1963, the teacher received an eight-year professional certificate and from that date on requested a continuing teaching contract which the board refused. After being notified in March 1964 that he would not be re-employed for a fifth year in the school district, the teacher sued for a court order requiring the board to execute a written continuing contract effective on and after September 1, 1963. The lower court directed the school board to do so. On appeal the judgment was reversed.

The court ruled that the unilateral action of the school board in withdrawing its acceptance of the teacher's resignation after it had become effective, did not cancel the resignation, and that by allowing the resignation to stand and thereafter voluntarily entering into a one-year limited teaching contract without protest, the teacher waived his right to a continuing contract of employment.

Pennsylvania

Elias v. Board of School Directors of the Windber Area
Wagner v. Board of School Directors of the Windber Area
218 A. (2d) 738
Supreme Court of Pennsylvania, March 22, 1966; rehearing denied, May 4, 1966.

Two school nurses sought a court order directing the school board to reinstate them to their former positions, to assign them to their proper duties, to issue them professional employee's contracts, and to award them damages for lost earnings. The lower court dismissed their complaints, and the nurses appealed.

At the time of initial employment, under a 10-month contract, neither nurse had a certificate to act as a school nurse or to teach school. Several months thereafter, they were issued state standard limited certificates to serve as school nurses, which they held when the school board terminated their employment after more than three years of service. The school superintendent, however, failed to rate either of the nurses during the last four months of the first two years of employment, or thereafter, and made no certification of any rating to the secretary of the school board.

A section of the tenure statute provides that no temporary professional employee shall be dismissed unless rated unsatisfactory and is so notified in writing within 10 days following the date of such rating. The section also provides that each temporary professional employee shall be rated by the county or district school superintendent twice yearly, and one who has been certified as satisfactory during the last four months of the second year of service shall become a full-fledged professional employee and shall be tendered forthwith a professional employee's contract.

The record revealed that neither nurse was ever rated unsatisfactory by the superintendent, and that the only rating received by either of them was an excellent rating in the case of one. In these circumstances, the court concluded that the absence of ratings indicates satisfactory performance, and consequently each nurse, having been certified as a school nurse and having attained the status as a professional employee at the time of dismissal, was entitled to a professional employee's contract under the provisions of the tenure law.

The court held that the rating requirement in the statute must be enforced in fairness to a temporary professional employee who aspires to the status of a regular professional employee. To hold otherwise, the court said, would permit a school superintendent by willful noncompliance with the statutory rating requirement effect a dismissal of a temporary professional employee in violation of the law. The failure of the superintendent to rate the nurses "is tantamount to a satisfactory rating." Since the school board failed to comply with the statutory requirement of rating the nurses unsatisfactory and giving them notice thereof prior to dismissal, they were entitled to be reinstated as permanent professional employees.

SCHOOL DESEGREGATION

(Note: In addition to the cases reported under this heading, there are a number of other 1966 court cases initiated by public-school pupils for school desegregation which contained issues on assignments of teaching staffs on a racial basis. The summaries of these cases are not included here because this report is limited to digests of cases in which the teachers themselves are litigants. Those interested in this aspect of teacher assignment are referred to the school desegregation cases in The Pupil's Day in Court: Review of 1966, another NEA Research Division school-law publication.)

Arkansas

Smith v. Board of Education of Morrilton School District
365 F. (2d) 770
United States Court of Appeals, Eighth Circuit,
September 14, 1966.

Negro teachers of Morrilton, Arkansas, and their professional organization sued their local school board and superintendent for an injunction requiring the employment of high-school teachers without regard to race, and the reassignment of elementary-school teachers and pupils on a nonracial basis. Alternatively, the teachers asked for money damages and the reorganization of the school system on a basis that disregarded race.

Until September 1965, teachers and pupils of the Morrilton school system were fully segregated by race. By September 1966, the school board agreed to have desegregated the local school system, grades 7-12, in terms of both faculty and pupils on a freedom-of-choice plan whereby any pupil could transfer to any school he wished to, or continue to attend his present school. By September 1967, grades 1-6 were to begin desegregation. In the first year of desegregation, the vast majority of Negro pupils chose formerly all-white or newly integrated high schools. Thereupon, the superintendent informed the seven Negro teachers of the formerly all-Negro high school, closed down owing to pupil transfers, that there would be no further local vacancies for them. In fact, 13 teachers did retire or resign over the summer of 1965 and 14 new teachers were hired, 12 of them white. Two teachers from the formerly Negro high school were offered elementary-school positions below their professional station.

A preliminary issue was whether the professional association to which the Negro teachers belonged had standing to sue. The court concluded that it did. Although technically a plaintiff must assert a right on his own behalf to litigate, the court felt that this was too narrow a rule to be interpreted literally, especially in the current tension of racial controversy, deterrance through fear of reprisal, and loss of individual interest. Also, the professional association did have an interest in retaining its membership and would be adversely affected by member-teachers' dismissals.

As to the constitutional issue of whether the teachers had been dismissed because of race, the court recognized that Arkansas had no teachers' civil service or tenure law and that faculty team consciousness, morale, and job security during consolidation might qualify as valid factors in a school-board employment policy. On the other hand, the court took cognizance that the Morrilton board had maintained a segregated school system for more than a decade after its unconstitutionality was known and before it implemented a plan to desegregate. During this period teacher employment and assignment were based on race. This indicated to the court that the dismissals complained of were similarly racial and therefore unlawful.

Another factor taken into account by the court was the changing of an all-white junior and senior high school into an integrated junior high school. Its white high-school portion was closed, as was the all-Negro high school, but its white teaching staff was granted priority over new faculty members, although white incumbent teachers for the senior high-school grades should have enjoyed no greater security of employment than Negro teachers.

The board's over-all school consolidation policy must give way, said the court, if the result of its use is a deprivation of constitutional rights. The court found that the board's method of filling the 1965 vacancies fell short of applicable constitutional standards for several reasons. For one, the two Negro teachers were reassigned to elementary schools without examination of their records which might have shown them to be entitled to a more equitable transfer. For another, when schools were closed in the past for plans not associated with desegregation, teacher assignments were shifted also, but this was done more amicably and without new applications requested of the teachers. During the desegregation revampment, however, new applications were requested.

Most saliently, perhaps, the board admitted that much of the reason for not reassigning Negro teachers to integrated schools was their allegedly inferior training in all-Negro colleges and inability to communicate with white pupils or to understand their problems. Other obstacles to interracial rapport in the board's criteria included subconscious racial hostilities. Such reasoning suggested to the court that while the Negro teachers were not considered on grounds of race alone, they were disqualified for reasons generally associated with race.

While the court disavowed any intent to restrict the school board's freedom to fully inquire and consider an applicant's qualifications and the district's needs, provided the board did not act unreasonably, arbitrarily, or capriciously, it did caution,

> in this day race per se is an impermissable criterion for judging....And this applies equally to considerations described as environment or ability to communicate or speech patterns or capacity to establish rapport with pupils when these descriptions amount only to euphemistic references to actual or assumed racial distinctions....Desegregation of pupils inevitably means that some of them will be exposed to teachers of another race. It is now too late for a school board to assume that it may objectively regard all supposed racial differences in order to avoid its obligation to employ teachers in accord with constitutional standards.

Since the affected teachers had found other positions between discharge and litigation, the court saw no point in ordering immediate reinstatement irrespective of current district needs. Instead, the court held that the teachers were entitled to preferences regarding future openings and to money damages as determined individually.

North Carolina

Wall v. Stanley County Board of Education
259 F. Supp. 238
United States District Court, M.D. North Carolina, Salisbury Division, September 16, 1966.

The school district desegregated its schools on a free-choice basis whereby Negro children were allowed to attend previously white schools. However, faculties remained segregated as of the opening of the school year 1965-66. Negro teachers were assigned to schools attended predominantly by Negro pupils, and white teachers to mostly white schools.

One Negro teacher, of unquestioned classroom ability, and her professional association, the North Carolina Teachers' Association, instituted a suit to enjoin faculty segregation and to reinstate the teacher to her previous teaching position. She had been refused re-employment as a result of difficulties with her principal. He had charged her with failure to take her pupils to the cafeteria and supervise them during lunch period. He also accused her of having a negative attitude, being argumentative, absent, defying orders, missing meetings, and being incompatible with her colleagues. As a result, the teacher was informed that she would not be reemployed at her old school and she was unable to obtain a position at any other school in the system. The superintendent of schools made no independent evaluation of her fitness, but satisfied himself with the rating given by her former principal. Nor did the superintendent or the board of education compare her qualifications with those of other teachers in the local school system.

These procedures were found to be subnormal in that the accusations were lacking in specificity and not written. No criteria were given to the teacher regarding what was expected of her and the principals were not told what standards were expected of teachers in general.

Nevertheless, the court held that the teacher was not denied due process rights in the board's summary decision not to rehire her, although the school authorities' procedure was not in accordance with preferable norms of personnel administration. The court found that North Carolina had no procedure for redress or appeal by teachers not rehired for the next school year. Teachers enjoyed no tenure and were hired from year to year only. The due process clause, the court said, did not require a state to provide notice or hearing on dismissal charges where the teacher had no tenure. Therefore, the board's failure to provide the teacher with a formal hearing or opportunity to rebut charges against her did not amount to denial of due process. Teacher employment was a matter of good faith and discretion, although it could not be exercised arbitrarily. Since there was no evidence of arbitrariness, the teacher was held not to have been deprived of her due process rights, especially since her attitude was independently rated as low.

As to teacher segregation, it was basic, the court said, that the Fourteenth Amendment of the federal Constitution forbade discrimination on account of race by public school systems, regarding assignment of teachers. And under the equal protection clause, when pupil desegregation necessitates reduction of teacher spaces in Negro schools, affected Negro teachers may not automatically lose their positions, but must be evaluated for any suitable positions in the entire system, whether occupied or not.

But the court found that the segregated placement of teachers by the Stanley County school board did not deny equal protection or due process. The court observed that the county's plan established the most meticulous and objective standards and procedures for evaluating teachers, focusing on almost every facet of preference, training, personality, and physical condition. In this mass of highly detailed information, any discrimination would become immediately patent.

The teacher and her association pointed to the school board's interview form for teacher applicants in which the board asked whether the applicant was willing to teach in integrated, white, or Negro schools. The court found nothing wrong per se with the form, although it granted that it might be misused. School officials might make beneficial reference to race, so as to determine which teachers actively preferred the challenge of teaching children from different ethnic or cultural backgrounds. And if the applicant were prejudiced, this too should be known.

Viewing the decision as a whole, the placement of teachers was found constitutionally unobjectionable and the board's manner of discharging the teacher involved was similarly held valid.

Virginia

Franklin v. County School Board of Giles County
360 F. (2d) 325
United States Court of Appeals, Fourth Circuit, April 6, 1966.

(See Teacher's Day in Court: Review of 1965, p. 37.)

Seven Negro teachers and the Virginia Teachers Association brought suit against the Giles County school board and its school superintendent. The teachers alleged that they had been denied re-employment for the 1964-65 school year because of race in violation of their rights under the Fourteenth Amendment. The district court held that the teachers were improperly discharged. The issue on appeal was the proper relief to be granted under the circumstances.

The facts showed that in the spring of 1964 the school board had decided to abandon its two Negro schools and integrate the system after 23 Negro pupils applied for admission to the white high school. The board directed the school superintendent to notify all seven Negro teachers in its employ that their services would not be needed after the close of the 1963-64 school year. In prior programs of consolidation of the white schools in the county, the white teachers affected in each instance were retained in the school system through transfer and faculty reassignments. During the spring and summer of 1964, eight new teachers, all of them white, were employed by the school system.

The school authorities contended that at the time the seven Negro teachers were discharged, the superintendent compared their qualifications with the 179 white teachers in the system and reached the conclusion that the Negro teachers were least suitable for employment. However, the district court concluded that the superintendent had considered their qualifications only as applied to expected vacancies, and in view of the school board's past practices, test this was too restrictive, and, therefore, was arbitrary and discriminatory with respect to the Negro teachers. In granting relief from this discriminatory discharge, the district court ordered the school board to notify the seven Negro teachers of any vacancy for which they may be qualified and to offer them an opportunity to apply for a teaching position in the school system in competition with others who might seek employment.

The appellate court ruled that the evidence did not support the district court's finding that any kind of comparative evaluation was made, but that the record only supported the conclusion that the Negro teachers were discharged because of their race. Therefore, they were entitled to a mandatory injunction requiring their reinstatement. Moreover, the appellate court held that the order of the district court did not go far enough, and that the individual teachers were entitled to re-employment in any vacancy for which they are qualified by certificate or experience. The order of the district court which did not require the school board to displace teachers already in the system was not disturbed since normal faculty turnover would create enough vacancies to place all of the Negro teachers who would want re-employment in the school system, and the board's practice in assigning teachers according to their specialties and certificates was flexible enough to enable the superintendent to adjust his existing faculty to meet the reinstatement order.

CIVIL RIGHTS

Connecticut

Board of Education of West Haven v. Commission on Civil Rights of the State of Connecticut
220 A. (2d) 278
Supreme Court of Connecticut, May 17, 1966.

Steeves, an unsuccessful candidate for the position of supervisor of adult education, filed a complaint against the school board with the commission on civil rights in December 1963. He claimed the board discriminated against him because of his age. At the time, Steeves was 50 years old, and was in the employ of the school system. He had been recommended for the appointment as supervisor by the school superintendent. When the position became vacant, the board voted to limit the applicants for the vacancy "to qualified classroom teachers, department heads or supervisors with administrative potential." This policy was in accord with a recommendation of an educational consultant who had surveyed the school system the year before and who had advised training and using teachers with administrative potential for appointment as administrators as the school system expanded.

At the board meeting at which the position was filled, one board member remarked that Steeves was 50 years old and that he wanted a young man to be training as a potential administrator in the position. A younger man was chosen.

In testimony presented at the commission hearing, board members denied that Steeves' age was a consideration influencing them in turning down the superintendent's recommendation to appoint him. The hearing tribunal of the commission concluded that the school board committed an unfair employment practice in violation of state law in that it discriminated against Steeves because of his age. The hearing tribunal ordered the board to offer Steeves the supervisor's position and to pay him salary for the two school years he had lost. On appeal by the school board, the lower court sustained the decision.

On further appeal, the decision was reversed. The Connecticut Supreme Court held that the finding that the school board discriminated against the 50-year-old applicant because of his age was not supported by substantial evidence as required by law. The court said that the hearing tribunal took the reference to the applicant's age by the board member out of context and gave it undue weight. The isolated observation of one school-board member could not be imputed to other members on the board as the reason for the board's action.

North Carolina

Johnson v. Branch
364 F. (2d) 177
United States Court of Appeals, Fourth Circuit, June 6, 1966.
Certiorari denied, 87 S. Ct. ___, January 9, 1967 (35 Law Week 3232)

(See Teacher's Day in Court: Review of 1965, p. 39.)

A Negro teacher with an exemplary 12-year teaching record failed to have her teaching contract renewed with the Halifax County school system on the basis of several minor infractions, including being 15 minutes late to supervise an athletic contest; arriving at school a few moments after sign-in time, but before class was due to commence; failure to furnish a written explanation for not attending a PTA meeting; failure to stand in the door to supervise pupils as classes changed; and failure to see that cabinets in her room were clean and free from fire hazard.

To all of these charges the teacher offered explanations and added that her not being rehired was really due to disagreement with her principal over her participation in local civil rights activities. Moreover, this personal tension was shown not to have affected her teaching ability.

The court held that the dismissal was a deprivation of the teacher's constitutional rights. While under North Carolina law, teachers' contracts are renewable annually at the discretion of school authorities, contracts may not be denied for capricious, arbitrary, discriminatory, or retaliatory reasons, the court pointed out. The importance of the teaching profession in a democratic society necessitates protection of associational and academic liberty. The aforementioned infractions were held neither individually nor collectively sufficient to justify failure to renew the contract of a teacher with a superb 12-year record. The only reasonable inference which the court felt might be drawn from the board's failure to renew the teacher's contract was objection to her civil rights activities. The school board, therefore, was ordered to renew the teacher's contract for the next school year and pay her damages.

The Supreme Court of the United States denied the petition of the school board for a writ of certiorari for a review of this decision.

South Carolina

Bradford v. School District No. 20, Charleston, South Carolina
364 F. (2d) 185
United States Court of Appeals, Fourth Circuit, June 6, 1966.

(See Teacher's Day in Court: Review of 1965, p. 40.)

A Negro teacher was suspended from his position one day after he was convicted on charges of being drunk and disorderly and assaulting a policeman. Two weeks later, the teacher brought an action under the federal civil rights statute asking the court to restrain the action of the school authorities. Sometime after the suit was filed, the teacher was dismissed.

According to the allegations in the teacher's complaint, the arrest, charges, and conviction arose out of his visit to a white barber shop where he attempted to get a haircut. The owner refused to serve him because of his race and called a policeman to remove him from the premises. The teacher alleged that the school authorities violated his due process rights in dismissing him because he was given no notice or opportunity to be heard; further, that the school authorities violated his rights to equal protection of the law in that his dismissal, while ostensibly for his conviction, was actually because he sought service in the barber shop and protested its denial.

The district court granted summary judgment to the school authorities and dismissed the teacher's complaint with prejudice. On appeal, this judgment was affirmed.

The appellate court held that, since the teacher made no attempt to support the allegations in his complaint that the school board discriminatorily discharged him, the only reasonable conclusion the lower court could reach was that there was no genuine issue of fact to be tried. Further, the appellate court found that the lower court was justified in holding that the teacher was not entitled to relief on grounds of due process or equal protection of the laws.

The appellate court observed that state law specifically vests in the school board the right to discharge teachers for "good and sufficient reasons" and offers the aggrieved teacher a means of appeal to the county board of education and then to the state court. The court noted, too, that the teacher admitted he did not pursue these remedies, that he did not support his allegations that the remedies were inadequate, nor at any time before bringing this suit, did he notify the school authorities of his objection to his suspension or of any defense he claimed to the charges under which he was convicted. In these circumstances, the appellate court believed that the rejection of the teacher's due process claims were justified.

In upholding the rejection of the teacher's contention that his right to equal protection of the law was violated by the action of the school board in dismissing him, the appellate court cited decisions that fitness for teaching depends on a broad range of factors and is not limited to classroom conduct alone, but that the discretion of a school board to dismiss a teacher may not be exercised in a capricious, arbitrary, or discriminatory manner. In this case, given the teacher's admission that he was convicted of public drunkenness and assaulting an officer and that his suspension was "by reason of his alleged misconduct," and his failure to allege that the school authorities had in any way conspired or colluded in the conviction or had any knowledge of any impropriety therein, the court found there were objective facts on the complaint which supported the discretionary action of the school board in dismissing the teacher. These factors, combined with the teacher's failure to notify the school board of any defense, was a bar to any relief.

Rackley v. School District No. 5, Orangeburg County, South Carolina
258 F. Supp. 676
United States District Court, District of South Carolina, Orangeburg Division, September 16, 1966.

A Negro teacher with an excellent classroom record had been active in local civil rights activities and had been arrested for trespass, disturbing the business of a hospital, and distributing handbills. After an earlier warning, she was, on October 7, 1963, dismissed from her teaching position for the school year 1963-64 on the basis of her breaches of law and civil rights activities. She brought an action against the school board, asking reinstatement and damages.

The issue was whether the school board, on the foregoing basis and in exercising its discretion, was justified in firing the teacher while she was under contract and in failing to offer her subsequent re-employment.

The court recognized that school boards had reasonable discretion to scrutinize teachers and discharge them for legally justifiable causes. In determining fitness to teach, school administrators may look to the "whole person, both in and out of the classroom."

While the court expressed its hesitation to override public actions except in the clearest of cases, it concluded that the teacher was discharged without good and sufficient reason. The school board's actions were based on the teacher's exercise of constitutionally protected rights. Thus, the discharge and non-re-employment were based on illegal considerations, resulting in discriminatory exercise of the board's powers.

The teacher was held entitled to be paid the balance of her 1963-64 salary and to be re-employed with her former status.

Williams v. Sumter School District No. 2
255 F. Supp. 397
United States District Court, District of South Carolina, June 15, 1966.

In this action the Negro teacher complained that the school district wrongfully failed and refused to renew her teaching contract for 1964-65 because of her civil rights activities. She asked for several forms of relief, including an injunction requiring that the school district offer her a teaching contract and to continue contractual relations without regard to her civil rights activities in particular and school desegregation in general.

The teacher had been with the school system for 10 years and had an excellent teaching record. Her school principal had recommended that the teacher be re-employed but her contract was not renewed. Her appeal to the school authorities failed. At no time was the teacher advised of the reasons for being refused re-employment although she asked to know why.

The court record contained statements by the school superintendent that certain activities of the teacher, such as entering Negro pupils in a wool contest and picketing stores "would reflect on her mature and professional judgment."

The school authorities maintained that since there is no teacher tenure law in South Carolina, the local school board has absolute rights, subject to the approval of the county board of education, in the employment of teachers. Therefore, the court should not and has no authority to write a contract between the teacher and the school district. The court was emphatic in denying its responsibility or authority to write such a contract, but said that it would protect the teacher's constitutional rights.

While respecting the school board's wide discretion, the court held that however wide the discretion, it could not be exercised to arbitrarily deprive teachers of their constitutional rights. The court ruled that the action of the school board was arbitrary, capricious, and without constitutional authority in that obviously the teacher was refused re-employment because of her civil rights activities, all of which were outside the classroom and off the school grounds. According to the court, the record revealed no other possible motive and the refusal of the board to specify the reason for not renewing the teacher's contract was silent witness to the discrimination against the teacher. Consequently, the teacher was entitled to the injunction she sought. The court said further that if attainable by the parties or by agreement of counsel, it would welcome an order agreeing on damages or monetary relief.

Washington

Washington State Board Against Discrimination v. Board of Directors, Olympia School District No. 1
412 P. (2d) 769
Supreme Court of Washington, March 31, 1966.

The state board against discrimination charged that the school district was committing an unfair practice when it requested applicants for employment to submit pre-employment photographs of themselves. A hearing tribunal found that the district was guilty of an unfair practice and ordered it to cease and desist, saying, "The attachment of photographs is a graphic specification of the applicant's race or color, as much, or more, than the affixing of the words 'negro' or 'oriental' would be."

Thereafter, the school district petitioned the superior court to set aside the cease and desist order. The state board against discrimination moved to dismiss the petition on the ground that the school district was a political or civil subdivision of the state without standing to have the order reviewed. The superior court denied this motion and overruled the tribunal's order for the reason that the state board exceeded its statutory authority. Substantively, the regulation was held to have no reasonable relation to the evil sought to be remedied because a personal interview disclosed the applicant's race more effectively and certainly than a photograph. Also, a simple request for a photograph did not express intent to discriminate.

In its appeal from this decision the state board argued that the school district had no right to appeal to the superior court because a statute enabling appeal expressly failed to apply to orders issued against a state political subdivision. Although the statute cited did prohibit the school district's appeal, the district pleaded the Administrative Procedures Act, which gave all aggrieved persons the right to appeal from an administrative tribunal.

The court held in favor of the state board. Although the court recognized the unwisdom of allowing an administrative board to issue orders directly affecting the statutory duties of other agencies without giving those agencies a right of review, and although the law against discrimination was a special act concerning the very "institutions and foundations of a free state," the statute cited by the state board precluding court review was nonetheless held by the court to be controlling, since it related specifically to rules and procedures of state agencies in general and the adoption of rules for the hearing of contested cases. Therefore, the school district had no right to have the tribunal's cease and desist order reviewed.

LOYALTY

Arizona

Elfbrandt v. Russell
86 S. Ct. 1238
Supreme Court of the United States, April 18, 1966.

(See Teacher's Day in Court: Review of 1965, p. 42; Review of 1964, p. 37; and Review of 1963, p. 32.)

An Arizona public-school teacher challenged the constitutionality of the Arizona Communist Control Act of 1961. The act required public employees to swear or affirm a conventional oath to support the Constitution of the United States and the constitution and laws of Arizona. The act also subjected the signer of the oath to criminal prosecution for perjury and upon conviction, to immediate discharge from public office or employment if, at the time of taking the oath, or any time thereafter during his term of public office or employment, (a) he knowingly or willfully advocates, commits, or aids in the commission of any act to overthrow by force or violence the government of the state or any of its political subdivisions; or (b) he knowingly and willfully becomes or remains a member of the Communist party or its successors, or any of its subordinate organizations, or "any other organization" having as one of its purposes violent overthrow of the state government or its political subdivisions where the officer or employee had knowledge of the unlawful purposes of such organizations.

The teacher, a Quaker, had refused to sign the oath. She brought suit for declaratory relief on the ground that she could not in good conscience take the oath since she did not know what it meant, and did not have any chance to get a hearing to determine its precise meaning and scope.

The Arizona Supreme Court in 1963 upheld the act. On appeal to the Supreme Court of the United States, the judgment was vacated and the case remanded to the Arizona court for further consideration in the light of Baggett v. Bullitt, 377 U.S. 360 (See Teacher's Day in Court: Review of 1964, p. 39) which declared the Washington state loyalty oath statutes to be unconstitutionally vague.

In 1965, the Arizona court again upheld the Arizona loyalty oath act, concluding that it did not forbid or require conduct in terms so vague that men of common intelligence must guess at its meaning or differ as to its application. Again the teacher appealed to the Supreme Court of the United States.

In a 5-4 decision, the Supreme Court of the United States ruled the Arizona loyalty oath act unconstitutional. The Court held that the failure of the act to restrict the scope of the membership provisions to persons who join subversive organizations with "specific intent" to further the illegal aims of the organizations, infringed on the First Amendment guarantee of freedom of association. Writing for the majority, Mr. Justice Douglas said:

> Nothing in the oath, the statutory gloss, or the construction of the oath and statutes given by the Arizona Supreme Court, purports to exclude association by one who does not subscribe to the organization's unlawful ends. Here as in Baggett v. Bullitt...the "hazard of being prosecuted for knowing but guiltless behavior"...is a reality. People often label as "communist" ideas which they oppose; and they make up our juries. "Prosecutors too are human." Cramp v. Board of Public Instruction....
>
> Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or public employees. Laws such as this which are not restricted in scope to those who join with the "specific intent" to further illegal action impose, in effect, a conclusive presumption that the member shares the unlawful aims of the organization....
>
> This Act threatens the cherished freedom of association protected by the First Amendment, made applicable to the States through the Fourteenth Amendment.

The dissenting opinion, written by Mr. Jutice White, said that under prior Supreme Court decisions which are not overruled, a state is entitled to condition public employment on the absence of knowing membership in organizations which advocate violent overthrow of the government which employs them, may inquire into such affiliations, and may discharge those who refuse to affirm or deny them. In the view of the dissenters, the Court erred in holding the Arizona act was overbroad. Even if Arizona may not take criminal action against its teachers or other public employees who become Communists knowing the purpose of the Party, the dissenters believed the Court overreached itself in invalidating the Arizona loyalty act. If the criminal penalty provisions in the act are invalid, the Court should so limit its holding and let the Arizona courts decide whether the criminal provisions are severable from the rest of the act.

New York

Keyishian v. Board of Regents of the University of the State of New York
255 F. Supp. 981
United States District Court, Western District of New York, January 5, 1966.
Probable jurisdiction noted, 86 S. Ct. 1921, June 20, 1966.

(See Teacher's Day in Court: Review of 1965, p. 46; Review of 1964, p. 38.)

A New York statute provided that no public school or state college teacher who advocated, wrote, or belonged to an organization teaching the violent overthrow of the federal government shall be appointed to or continued in his position. Another statute provided that any superintendent, teacher, or employee of the public school system shall be removed for uttering any treasonous or seditious words or doing such acts while holding his position. Each year the school authorities were required to report on all employees' adherence to the law. The Board of Regents was required to list what it considered to be subversive organizations and report annually to the legislature its measures of enforcement of and compliance with the statutes. The board determined that the Communist Parties of the state of New York and the United States of America were subversive organizations. The statute made membership of a person in either group prima facie evidence of his disqualification to teach in public schools or colleges. In case formal dismissal charges were preferred, all constitutional rights of fair trial, representation by counsel, and appeal were to be observed.

The State University of New York at Buffalo, in attempting to comply with these rules, distributed to every staff member a booklet of the rules and required each faculty member to sign a certificate which declared that he had read the rules and acknowledged that they constituted part of his terms of employment. The certificate also recited that the signer was not then a member of the Communist Party and that if he had ever been a member, he had informed the university president of this fact.

Four faculty members who had declined to sign the certificate were notified that if they did not sign, their terms would not be renewed on grounds of insubordination. These four persons and a fifth, a library specialist without tenure who was dismissed for failure to sign the certificate, brought a class action against the state school authorities. The relief sought was an injunction against enforcement of the loyalty statutes and against the regulations and procedures used to implement these statutes.

Plaintiffs argued that the laws had no constitutionally valid objective and infringed on freedom of expression without being justified by legitimate state interests. The court answered this by alluding to several recent decisions upholding the state's interest in preventing the educational system from being used as a platform for urging students to overthrow the government by violent means.

Also rejected by the court were plaintiffs' arguments that the statutes were unconstitutional as ex post facto laws or bills of attainder.

Plaintiffs also challenged the New York statutes and procedures on grounds that they impinged rights of free speech, thought, and expression more than necessary to protect the state from overthrow by being too broad and vague, and by imposing an unfair burden of justifying their conduct on those adversely affected. The court reviewed appropriate holdings and decided that there was no rule of law that a potential suspect in an area concerning free speech may never be called on to justify his conduct. Cases establish that where First Amendment freedoms are concerned, the burden of proof must rest on the attacker as much as possible consonant with the interest he asserts. The court voted that under present procedures in New York, the state could not dismiss or refuse to hire a teacher without carrying the burden of showing statutory violations pursuant to statutory procedure.

Plaintiffs pointed to teachers serving without tenure and on contract to whom adequate hearing was not afforded and referred specifically to the nontenure plaintiff who was dismissed from his library position without a hearing. The court distinguished this incident on the fact that this employee was initially questioned about subversive activities but refused to answer. Had he answered that he had been or was then a Communist Party member, he would have had an opportunity to explain and a right to a full hearing. Therefore, he cannot complain of lack of due process. The court said his dismissal was for insubordination in refusing to answer a relevant inquiry.

Finally, plaintiffs maintained that the breadth of language rendered the statutes unconstitutionally vague because it tended to deter legitimate as well as controllable expression. The court determined that the statutes did not deter legitimate activities in that they did not prohibit teaching Communist theory in economic and political history courses, but prohibited only the teaching that the government should be overthrown by force; also only knowing membership, not innocent membership, in a subversive organization, was grounds for ineligibility to teach.

In conclusion, the court found all the challenged statutory sections constitutional in both substance and procedure.

The Supreme Court of the United States accepted an appeal from this decision.

(Note: In a 5 to 4 opinion rendered on January 27, 1967, the Supreme Court declared the statutes and the regulations and procedures adopted for their implementation to be unconstitutional. (35 Law Week 4152.) The statutory sections which required removal of teachers for treasonable and seditious utterances and acts were held to be invalid under the First Amendment on grounds of vagueness. The statutory sections which made membership in the Communist Party prima facie evidence of disqualification for teaching, were held to be impermissibly overbroad in that the legislation sanctioned mere knowing membership without any showing of specific intent to further the unlawful aims of the Communist Party.)

LIABILITY FOR PUPIL INJURY

Arizona

Morris v. Ortiz and School District No. 1 of Pima County, Arizona
415 P. (2d) 114
Court of Appeals of Arizona, June 14, 1966.

The parents of a boy injured in an auto mechanics class filed suit to recover damages for the injury. Defendants were the pupil's teacher and the school district. The teacher was charged with negligence. He had 13 years' teaching experience in auto mechanics.

The facts were that a group of four or five boys were converting an automobile model for demonstration use. They had severed the top of the car, lifted it off the car frame and placed it on the workshop floor, exposing sharp and jagged metal edges along its sides. Needlessly, some boys decided to reshape the top and began jumping on it. The teacher testified that he told them to stop, and to throw the car top in a junk heap behind the school. One boy testified that the teacher expressed a desire to have the top bent or folded. There was no leadership or plan as to disposing of the top. The injured boy along with some others lifted the top to remove it from the room when two other boys, not knowing of the plan to remove the top, jumped off the car onto the top, causing it to slide over the boy's fingers and cut him. At that time, the teacher was circulating about the room, supervising various projects then in progress and was 5 to 10 feet away when the accident happened.

At the close of plaintiffs' case, defendants moved for a directed verdict. The trial court granted this motion on grounds that plaintiffs' evidence did not make out a case of defendants' actionable negligence or proximate cause. On appeal by plaintiffs, this judgment was reversed and the case was remanded for retrial.

The court said that generally a person has no duty to control a third person's conduct to prevent harm to another, unless there is a compelling special relationship. Such relationship includes that of pupil and teacher. The teacher has a duty to control the conduct of pupils in his class to prevent them from harming themselves or other pupils. The court recognized the impossibility of a teacher supervising every minute detail of every project, but it believed that a jury might find that a prudent auto mechanics teacher would have given more personal supervision to the somewhat dangerous operation of removing the car top, or would have appointed a group leader to coordinate the activities of the boys removing the top. The nature of the task required team effort, and the accident could have stemmed from lack of coordination.

It was possible, the court further observed, that the trial court concluded that the injuries were caused by the independent, intervening act of the pupils, relieving the teacher of liability. Such conclusion would be erroneous, since the teacher might have reasonably foreseen such consequences and should have acted to thwart them. For these reasons, the court decided that reasonable minds might disagree whether the teacher was reasonably prudent as a teacher and the question was therefore one of fact for a jury.

Michigan

Picard v. Greisinger
138 N.W. (2d) 508
Court of Appeals of Michigan, Division 1,
December 20, 1965.

Parents brought an action to recover for personal injuries sustained by a pupil in a gym class against the school district, the school board, and the gym teacher. The complaint alleged that the pupil was injured in class when he was struck on the head by a basketball thrown at him intentionally and forcibly by the teacher at the time when the latter knew or should have known the pupil was unprepared to catch it. Plaintiffs pleaded that this negligence on the part of the teacher was imputed to the school district and school board in that they retained the teacher in employment even though they knew or should have known that he was of violent disposition and had or was likely to cause harm to pupils. A further allegation was that the district and the board were negligent in failing to provide adequate supervision for pupils.

The school district and the school board pleaded the defense of governmental immunity. Plaintiffs responded that this defense did not preclude the district and the board from liability for their own tortious acts and the tortious conduct of their employees acting within the course and scope of their employment.

The trial court granted summary judgment to the district and the board on authority of the

1962 decision Sayers v. School District No. 1 (114 N.W. (2d) 191) which, while abrogating governmental immunity as against municipalities, held that school districts continue to have governmental immunity in the exercise of a governmental function.

On appeal, the decision was affirmed.

Missouri

Smith v. Consolidated School District No. 2
408 S.W. (2d) 50
Supreme Court of Missouri, En Banc,
November 14, 1966.

A high-school pupil sued his school district, superintendent, and instructor for personal injuries which he sustained while practicing holds and falls in a wrestling class. The pupil charged defendants jointly and severally with negligence in failing to properly supervise or designate rules and regulations for wrestling activities, to ascertain whether the pupil and his wrestling partner understood their instructions and chances of injury, to exercise care, or to employ a competent instructor.

Defendants' claimed that the rule of sovereign immunity protected the school district from liability, that the individual defendants were performing governmental actions and that they were charged with a nonfeasance for which they were not liable, since the tort, if any, was not intentional. A motion to dismiss the complaint was granted and upheld on appeal.

The pupil theorized that the physical education instructor was an employee of the school superintendent and that the superintendent would be liable for the instructor's acts on a master-servant basis. The court rejected this theory as fallacious, saying,

> It is a matter of public knowledge, and we may say of judicial notice, that all teachers in the public schools are employees of the school district and are employed by it on contracts. The superintendent may presumably recommend, but he does not employ. He is neither the master nor the employer of any teacher. These conclusions also refute the allegations to the effect that [the superintendent] failed to employ a suitable and competent instructor for wrestling.

The pupil further asked the court to review the doctrine of sovereign immunity and to abolish it by judicial decree. The court noted that for more than a century Missouri courts have uniformly held that a state political subdivision is not subject to liability for negligence. Under this rule school districts have long been held immune from tort liability. Therefore, the court regarded this rule to be one of fixed public policy and any abandonment should come through the legislative process. "It is not the function of the judiciary to create confusion and instability in well settled law, nor is it within the province of judges to refuse to apply firmly established principles of law simply because these rules do not conform to the individual's judge's philosophical notion as to what the law should be."

The court then reached the question of the superintendent's liability. No facts were alleged directly connecting him with a duty to instruct anyone in the wrestling course, to check on pupils' individual knowledge, or to personally supervise their activities. The court, therefore, held that no cause of action was stated against the superintendent.

Finally, the court considered the liability of the physical education instructor who was charged with failing to instruct the pupil, and to designate rules and regulations for wrestling activities and, being present, with neglecting to foresee the accident or forewarn the pupil thereof. The court concluded that the pupil did not allege sufficient facts to state a cause of action for relief against the instructor. In drawing this conclusion, the court recognized that the nature of the sport of wrestling was to overpower one's opponent. The very nature of this innately dangerous activity required that the pupil set forth factual details with enough specificity to show the instructor's duty to stop the match to prevent injury. Thus, the bare allegation that the instructor was negligent in failing to properly teach or designate rules were conclusions and did not show how his omissions caused the pupil's injury or how his performance of the omitted acts would have prevented the injury.

Pennsylvania

Esposito v. Emery
249 F. Supp. 308
United States District Court, Eastern District of Pennsylvania, April 21, 1965.

A seven-year-old pupil suffered a permanent ear injury when a bank of lockers fell on him as he was attempting to open one of the lockers. The door of the locker was binding, probably because of paint which had recently been applied. The child's father sought to recover damages. He acknowledged that the school district was protected from liability by governmental immunity. But he charged that the principal, assistant principal, director of administrative services, and janitor were liable for their own personal, injury-causing tortious acts committed within the scope of their authority. These individuals, who were named as defendants, moved for summary judgment on the ground of sovereign immunity. The question thus became whether sovereign immunity extended to them.

The court held that servants and agents of the school board were liable for their own personal torts, but they were not vicariously liable for the negligence of any other servant or agent. While governmental immunity was granted to the individual school-board directors, since they formed a corporate body, the board's servants and agents were not clothed with the same corporate character. Defendants' motion for summary judgment was therefore denied.

RETIREMENT

California

Cummings v. California State Teachers' Retirement Board
50 Cal. Rptr. 391
District Court of Appeal, First District, Division 1, California, March 28, 1966.

A retired teacher brought an action for declaratory relief. She sought a determination that certain 1957 amendments to the state teachers' retirement law were unconstitutional as applied to her because they reduced her pension as computable under the law in effect on July 1, 1956.

In 1955, the legislature changed the teachers' retirement law in a number of respects, effective on July 1, 1956. Included was an amendment (now section 14360) which defined how credit for part-time service was to be calculated. Thereunder, the credit for part-time service in each school year was to be based on the ratio that service rendered bears to the minimum full-time service required for credit for a year of service. Before this 1955 amendment, another section (now section 14310) had directed the retirement board to fix rules for minimum time on the basis of which one year of service and proportionate parts of a year were credited. Under the adopted board rules applicable prior to July 1, 1956, a member received credit for service if he taught a minimum of one hour per day for 10 days in a month, for eight months during the school year, with no distinction made between full and part-time service.

The 1957 amendment, the applicability of which the teacher challenged to her situation, defined final compensation, and allowed the board to specify a different final compensation with respect to part-time service rendered prior to July 1, 1956, for which credit was given under the board rules in effect prior to such date.

When the teacher retired in November 1962, she had a total of 21.75 years of full and part-time service; of this total, 13.75 years were years in which part-time service was rendered before July 1, 1956, and which under the application of the 1955 amendment produced an adjusted service credit of 8.437 years. In arriving at the monthly retirement allowance of $199.93 due the teacher pursuant to the 1957 amendment relating to final compensation for part-time service, the board used the adjusted service credit of 8.437 years, but compensated for this by multiplying the amount of final compensation thus arrived at by 13.75 years. In any event, the amount of the retirement allowance calculated without regard to the 1957 amendment would still have been $199.93, provided it was proper for the board to adjust for the part-time service rendered before July 1, 1956.

The teacher contended that in view of the general statement in the 1955 legislation changing the general powers of the board in section 14310, that "service rendered prior to July 1, 1956 shall be credited according to provisions of this chapter which were applicable prior to July 1, 1956," it was mandatory that her retirement allowance be computed on the basis of 21.75 years of service, and, therefore, she was entitled to a monthly allowance of $261.63. She argued that under the 1955 amendment there was no basis to reduce either the number of years of service credited, or the amount of final compensation, and that the 1957 amendment to reduce the amount of final compensation for part-time years caused an illegal reduction in the allowance otherwise payable.

The court ruled against the teacher, holding that the general statement pertaining to section 14310 in the 1955 legislation was not controlling. The court said that the provisions in sections 14359-14362, as amended in 1955, set up a whole new basis for calculating retirement allowances, and could not be deemed provisions of the chapter to which service had been credited under rules in existence prior to their adoption. Put another way, the general statement could not control the particular system of calculation found in sections 14359 and 14360, which did not deny credit for the years in which service was rendered, but which expressly sets forth the weight to be given such service if it is in fact part time. The rule is that a specific provision is treated as an exception to and governs over a general provision. The court noted that if the law was to be construed as argued for by the teacher, she would receive a windfall as compared with full-time employees. If her contention was correct, a lifetime full-time teacher, and a former part-time teacher who both had the same "final compensation" at the time of eligibility for retirement, would receive the same allowance. Such an intent, the court said, could not be attributed to the legislature.

Louisiana

Maillet v. Board of Trustees, Teachers' Retirement System of Louisiana
183 So. (2d) 321
Supreme Court of Louisiana, February 23, 1966.

(See Teacher's Day in Court: Review of 1965, p. 51.)

A teacher became ill with cancer in October 1962. He filed an application for disability retirement on December 21, 1962, selecting an option under which he was to receive smaller benefits, and on his death, monthly payments were to continue to his widow for life. He requested that the retirement allowance become effective on the earliest possible date. The retirement board advised the teacher on January 14, 1963, that his application was approved and that he would be retired on disability effective January 20, 1963. The teacher died on January 23, 1963, which was more than 30 days after he applied for retirement but less than 30 days after the application was approved or after the effective date of retirement. The school board had paid the teacher through January 19, 1963, and he contributed to the retirement fund through that date.

The teacher retirement law provides that no optional selection shall be effective when a beneficiary dies within 30 days after retirement and that such beneficiary shall be considered as an active member at the time of death.

The widow instituted suit against the retirement system after being notified that she was ineligible for monthly benefits under the option but eligible for only a lump-sum refund of the accumulated contributions because the teacher had not lived 30 days following his retirement.

The trial court ruled in favor of the widow, rewarding her monthly retirement benefits commencing with January 20, 1963. The district court of appeal first upheld this decision, ruling that the 30-day period in the statute was merely an administrative delay granted the retirement board to process the application. But on rehearing, the district court concluded that its decision was incorrect, and that the purpose of the delay was to minimize or prevent "death bed" applications from being effective. Accordingly, under the statute, the optional selection the teacher made for monthly benefit payments would have become effective on February 19, 1963, had he lived that long. Since he died before this date, the court concluded he must be considered as having been an active member, and, therefore, the widow was not entitled to monthly benefits under the option.

The state supreme court reversed this decision on appeal. Reasoning that retirement legislation is remedial in nature and its provisions operate retrospectively, the court found that when the retirement board notified the teacher that his request for retirement on disability was granted and was effective on January 20, 1963, this action operated retrospectively, and reverted to December 21, 1962, the date of the retirement application. The court took the word "effective" to mean that the action which reverted back to December 21, 1962, came into being on January 20, 1963, and immediately reverted and become retrospective. Therefore, when the teacher died on January 23, 1963, 30 days had elapsed since December 21, 1962, and the statutory provisions that no optional selection should be effective when a beneficiary dies within 30 days after retirement could not deprive the widow of her survivor benefits. The court concluded that the retirement statute did not contemplate a mandatory 60-day waiting period between the application for retirement and a disability retirement allowance and the operation of such, once the application is granted.

New York

Battaglia v. Teachers' Retirement Board of the City of New York
271 N.Y.S. (2d) 83
Supreme Court of New York, Special Term, New York County, Part I, June 3, 1966.

A teacher who had commenced service for the New York City board of education in 1947 sought a court order directing the Teachers' Retirement Board to apply his prior service for the Works Projects Administration (W.P.A.) in 1935 to 1939 to his retirement credit. In 1965, the New York City Administrative Code was amended to allow new entrants (defined as teachers serving after 1917) to purchase for retirement credit, prior-service credit in the W.P.A. Based on this law, the teacher made his application but it was rejected. Rejection was based on another section of the Code which allowed to transferees to the New York retirement system from other systems "all service credit to which he would have been entitled under paragraph one ...had he not transferred from another retirement system." Paragraph one allowed credit "for all city-service" but did not refer to W.P.A. service. Notwithstanding, the court held the teacher was entitled to purchase for retirement credit his W.P.A. service and directed a trial on the issue as to whether the teacher had such service, since the retirement board denied knowledge or information in this regard.

The court said that the amended statute granting the right sought by the teacher, on its face, applied to him. It noted that the 1965 amendment was enacted to liberalize the retirement allowance and specifically to abrogate the effect of a court decision wherein

W.P.A. service of the type here in issue was held not allowable for retirement credit in the New York City teachers' retirement system. Accordingly, if the teacher had W.P.A. service, as he claimed, he was entitled to purchase prior credit for such service.

Finn v. Teachers' Retirement Board of the City of New York
273 N.Y.S. (2d) 723
Supreme Court of New York, Special Term, Kings County, Part I, September 21, 1966.

Beneficiaries of a deceased teacher sought to recover her death benefits. The dispute was as to the amount due them. The teacher had requested that her retirement become effective as of January 10, 1966. She died February 11, 1966. A portion of the teacher's application recited that the effective date of retirement was as stated in the application or the date preceding death, whichever occurred first.

The beneficiaries contended that the effective date of decedent's retirement was February 10, the day preceding her actual death. And since the retirement board had not approved or taken any action on the application for retirement, and the teacher had not received any benefits, and inasmuch as the beneficiaries' attorney subsequently revoked the application, the date therein of January 10, 1966, was not the effective date of her retirement, but instead it was February 11, 1966. Therefore, the beneficiaries were entitled to a larger benefit, pursuant to the "death gamble" statute, providing for payment of special benefits if a teacher dies within 30 days after the effective date of retirement.

The court saw no merit to this argument. The contents and language of the application clearly fixed January 10, 1966, as the deceased teacher's date of retirement. Merely filing this application retired the teacher on that date without anything further required of the retirement board. Since the teacher's death did not occur within 30 days of retirement, her beneficiaries were held not entitled to the special benefits.

Smits v. Teachers' Retirement System of the City of New York
265 N.Y.S. (2d) 923
Supreme Court of New York, Kings County, Part I, December 7, 1965.

The widow of a teacher and the legal representative of his estate sued the retirement system to compel it to take back the sum of $82,751.64 paid to her as executrix of the teacher's estate and to pay over the sum to her individually as his beneficiary. This change was requested in order to avoid unnecessary expenses and taxes.

The question before the court was whether the teacher was required, as the retirement board claimed, to file a designation of beneficiary for the balance of the reserve in his account in addition to the designation he filed in 1926, in order for the widow to receive his pension payments under the death gamble clause as a named beneficiary. In the 1926 designation, the teacher had named the widow as his beneficiary for the accumulated deductions from his salary in the event of his death before retirement and for the death benefit payable should he be eligible for service retirement at the time of his death.

The court found that each of the two designations apply to different funds, each determined by different contingencies, one on death before retirement, the other on death after retirement; and that the funds for which the teacher made his beneficiary designation in 1926 was not now involved. The court held that the widow was not entitled to the relief requested since the teacher failed to designate her the beneficiary, as required under the law, for the balance of the reserve of the retirement allowance due him in excess of the amount which he shall have received up to the time of his death.

Stone v. Gross
269 N.Y.S. (2d) 81
Supreme Court of New York, Appellate Division, Second Department, April 4, 1966.

The New York City teacher instituted court proceedings to annul a written request by the school superintendent to the New York City Teachers' Retirement System to retire her for disability, and for other relief. The school superintendent and the retirement system appealed from the lower court judgment which granted the teacher's application in all respects. Among other things, the judgment had annulled the request that the teacher be retired for disability, the direction that she submit to medical and psychiatric examinations, the medical reports made as a result of certain examinations, and the imposition of a leave of absence without pay. The judgment directed that the teacher be restored to her position with salary and interest, and enjoined the school superintendent from compelling the teacher to submit to the medical and psychiatric examinations for the purpose of retiring her for alleged disability.

On appeal the court ruled that the medical examinations made of the teacher were not illegally required; consequently, the medical reports based on the examinations were not invalid, and the teacher was properly declared in the status of an inactive employee without pay. However, the court held that before the teacher could be recommended for disability retirement, she was entitled to appear before the school superintendent for a hearing and determination of her ability to render continuous and efficient service as based on the medical reports. Furthermore, the request by the school superintendent to the retirement system that the teacher be retired for disability was insufficient in the absence of a showing that the authority to do so was delegated to the superintendent by the board of education.

As modified by this opinion, the judgment was affirmed.

Wulff v. Teachers' Retirement Board of the City of New York
272 N.Y.S. (2d) 502
Supreme Court of New York, Special Term,
New York County, Part I, June 25, 1966.

A teacher became a member of the New York City teachers' retirement system in 1940 as a swimming teacher. Next year the position of swimming teacher was abolished, and the teacher received the position of instructor in showers at a lower salary than she earned as a swimming teacher. From 1943 to 1963 the teacher did not teach, but served actively in the Naval Reserve. During her period of Naval service, the board of education restored shower instructors to positions as swimming teachers, but this teacher was not so restored since she was not available for teaching then. Upon her military discharge she was reinstated as instructor in showers. She reported for work and applied for disability retirement and for 200 days' sick leave which had accumulated.

The court held that the teacher was on a leave of absence from 1943 to 1963, and since she agreed to contribute to the retirement system the amount that she owed, she was entitled to the twenty years of Naval service as service credit, under provisions of the military law. In so holding, the court rejected the argument of the retirement board that the teacher had no right to the benefits because she never intended to return to teach and that the statute conferring credit for military service was not meant to cover career military personnel. The court said that this might well be the case, but the terms of the statute were clear, and to uphold this argument would require the courts to question to intent of each person seeking to avail himself of the benefits of the statute.

But the court did not allow the teacher to recover retirement benefits as a retired swimming teacher. As a restored military veteran, she did not automatically become appointed to a teaching position immediately on separation from the Armed Forces. She had to wait for appointment from her eligibility list. The court held that the teacher had the position of instructor in showers, and her retirement benefits and future contributions to the retirement fund were to be calculated on this basis. She was also held entitled to her 200 days' sick leave with pay, and, in accordance with military law, the city was required to pay her contributions to the retirement system so long as her military salary was less than she would have received as a teacher for the same period.

WORKMEN'S COMPENSATION

Arizona

Rodgers v. Sunnyside High School District No. 12
415 P. (2d) 112
Court of Appeals of Arizona, June 8, 1966.

A high-school teacher-athletic coach who was injured while coaching football, claimed workmen's compensation benefits. According to the findings of a workmen's compensation board, the injury caused epilepsy which was contained by medication, and which resulted in 5 percent disablement. The teacher was not incapacitated professionally, and his teaching contract was later renewed for five years at an increased salary. The industrial commissioner awarded compensation on a basis of 5 percent physical functional disability. The teacher did lose $300 coaching pay for the year of injury, but was offered an equivalent coaching position for the following year, which position he declined because he did not feel that he could do it and was advised not to by his doctor.

The teacher brought an action to review the commissioner's award. The court upheld the award on the ground that there was sufficient evidence before the commissioner to support his findings. The court emphasized that the teacher was engaged in active outside activities, working with boys in farmwork and highway beautification. Further, it was the opinion of a medical evaluation board that the teacher was physically and mentally able to continue his coaching work.

Delaware

Pyle v. Marshallton Consolidated School District
213 A. (2d) 862
Supreme Court of Delaware, October 15, 1965.

A teacher was injured in an automobile accident while returning from a National Education Association convention. She claimed Workmen's Compensation benefits, alleging that her accident arose out of and in the course of her employment. The teacher attended the convention as a delegate of her local education association. The local association paid part of her expenses and she paid the rest; her employer paid nothing. The convention took place during the summer when she was not under the control of her employer. The school board did not direct the teacher to attend this convention, although as a general policy the board encouraged teachers to attend such conventions. Furthermore, it did not rate its teachers on the basis of their attending any such conventions and had not authorized any teacher to so represent it.

On the basis of these facts, the Industrial Accident Board denied the teacher compensation benefits, on the finding that the teacher had made the trip voluntarily without consulting the school board, and perhaps without its knowledge, and without risk of penalty for nonattendance.

The teacher appealed from this finding, stressing the alleged benefits to the school and its general policy favoring attendance at such conventions. But the Board considered these facts too intangible, indirect, and remote to justify a finding that she made the journey in the course of her employment. The court upheld the Board in this finding. The criteria for awarding benefits to an employee injured on a trip, the court pointed out, is that the trip was ordered for the employer's sole benefit or for the mutual advantage of employer and employee. Since there was no order that this teacher travel to and attend the convention, this test was not met. Therefore, the teacher's injuries were properly found noncompensable under the Workmen's Compensation law.

Idaho

Gentili v. University of Idaho
416 P. (2d) 507
Supreme Court of Idaho, July 14, 1966.

A claimant for workmen's compensation benefits was a graduate student employed as a teaching assistant for which he received tuition, fees, and a salary of $1,800. He worked 12 to 15 hours per week assisting laboratory operations and quiz sections and grading reports and papers. While conducting a laboratory experiment as part of his graduate thesis, he was injured when glassware he was filling with acid broke and some acid splashed into his eye.

Claimant sought compensation for the injury. After a hearing, a Workmen's Compensation board concluded that the injury arose out of and in the course of his employment. The university and its insurance carrier appealed, raising the question of whether the board erred in concluding that the injury arose out the student-teacher's employment, in view of the fact that the claimant was pursuing his graduate work when injured and was not teaching.

The court reversed the board order granting compensation, because the claimant established only that he was performing work for his own benefit and not for the benefit of his employer. The board also found that the work that claimant was engaged in at the time of his injury was not directly a part of his duties as teaching assistant. Moreover, the requirement that claimant maintain his scholastic standing to continue as a teaching assistant was held by the court to be insufficient in law to hold claimant's employer, the university, responsible for injuries claimant sustained in pursuit of his personal scholastic goal.

Michigan

Burchett v. Delton-Kellogg School
144 N.W. (2d) 337
Supreme Court of Michigan, August 24, 1966.

A grade-school teacher's daily class schedule was so crowded that she has to prepare lessons and correct papers at her home at night. All teachers in her school were in the same situation, and the school knew of their working at home on school matters. Along her car route to and from school, while carrying books and papers back and forth, she occasionally stopped to collect leaves, flowers, and birds' nests for her pupils' nature study.

While going home from school one day, the teacher was injured in an automobile accident. A Workmen's Compensation referee granted compensation benefits to her, but his decision was overruled by an appeal board. The teacher appealed to the court, contending that she was performing the duty of transporting school work as her school expected and required of her in her normal professional course, as well as driving herself home, when the mishap occurred. On this basis, the teacher argued for the application of the "dual purpose" doctrine in that when the accident occurred, she was pursuing both the objective of going home and taking school work home to finish, thereby entitling her to Workmen's Compensation benefits.

The court emphasized the general rule that employees going to and coming from work were not covered by the Workmen's Compensation act. So in applying the dual-purpose doctrine, said the court, strict tests must be met: Did the school expect or command teachers to transport papers home for correction? It did. Did the school provide time and facilities for doing the work in school? It did not. Was the teacher transporting the work home for her own convenience? She was not, the court found. The court concluded that if the teacher had not combined this service with her trip home from work, a special trip would have had to be made for school purposes. The dual purpose rule was thus held to apply.

The decision of the appeal board was reversed, and the case was returned to the appeal board for proper application of the dual-purpose doctrine.

New Jersey

Binet v. Ocean Gate Board of Education
218 A. (2d) 869
Superior Court of New Jersey, Appellate Division, March 29, 1966.

A principal was killed in an automobile accident while on his way home from a P.T.A. meeting. En route home, he had stopped off at a local tavern, but intoxication was not the sole proximate cause of the mishap. The question was whether his death was compensable under Workmen's Compensation laws. The court held that it was, although the general rule is that death or injuries sustained by an employee coming and going to or from work is not within Workmen's Compensation coverage. When death or injury occurs in the performance of a special service, however, it becomes an exception entitling the injured party or decedent's estate to benefits, even if the accident occurs while he is en route home.

The court noted that while attendance at the P.T.A. meeting was not compulsory, it was considered by the principal's employer to be desirable. The meetings were held once a month during the school year and after regular employment hours. For these reasons, the court regarded the P.T.A. function to amount to a special service. The fact that it took place at the principal's regular place of work was not determinative, in the court's view. The Workmen's Compensation Act was to be interpreted liberally with regard to hours of service, employer's premises, or course of employment.

New York

Shafran v. Board of Education, Central School District No.1
269 N.Y.S. (2d) 593
Supreme Court of New York, Appellate Division, Third Department, May 3, 1966.

A remedial reading teacher was injured in an automobile accident while driving to work. An award was granted by the Workmen's Compensation

Board, which found that the accident occurred within the scope of her employment, since she was required as part of her duties to use her own car, because of her teaching specialty. The teacher taught at two schools, six to eight miles apart. On the day of the accident, she was required to teach at one school, then drive to the other for a faculty meeting. There was no public transportation to carry her between the two locations.

Although the teacher was driving to work from home and not between schools when injured, the court held that her injury arose out of her employment. The court reasoned that traveling to and from employment is within the course of one's employment where the obligations of the job reach out beyond business premises, and obligate the employee to use a motor vehicle. The teacher here, by the nature of her duties, was required to have her car available at her place of employment. Thus, the court upheld the compensation board's finding that her driving to school was a risk of her job and within coverage of Workmen's Compensation benefits.

MISCELLANEOUS

Arizona

Johnson v. Board of Education for Phoenix High School District
419 P. (2d) 52
Supreme Court of Arizona, October 19, 1966.

(See page 14. Case involves two actions, one for breach of contract and one for defamation.)

California

Berry v. Coronado Board of Education
47 Cal. Rptr. 727
District Court of Appeal, Fourth District,
California, November 24, 1965.

(See page 10. Case involves compensation for sabbatical leave.)

Odorizzi v. Bloomfield School District
54 Cal. Rptr. 533
District Court of Appeal, Second District,
Division Two, California, November 3, 1966.

An elementary-school teacher was arrested for suspected homosexual activities, questioned by police, booked, and released on bail. The superintendent and the school principal advised the teacher to sign a resignation without consulting an attorney. Otherwise, they threatened to dismiss him and publicize the affair.

The teacher signed the resignation, but subsequently sought to rescind his resignation on the ground that his consent had been obtained through duress, menace, fraud, undue influence, or mistake.

The court held that the teacher set out a valid claim that his consent to the resignation was obtained through undue influence, but not on the the other grounds. The court defined undue influence as coercive persuasion which overcomes the will without convincing the judgment. This is done through high pressure exploitation of mental, moral, or emotional weakness. Misrepresentation of law or fact is not essential as long as there is a taking advantage of another's weakness or distress.

In this case, the teacher pleaded such weakness at the time he signed his resignation. He argued that he was unable to freely and competently apply his judgment. He declared that he was under severe mental and emotional strain because he had just completed the process of arrest, questioning, booking, and release on bail, and had been without sleep for 40 hours. As an abstract question, the court found that the teacher had successfully pleaded the possibility that exhaustion and emotional turmoil had wholly incapacitated him from exercising his judgment.

Another aspect of undue influence involved application of excessive strength by a dominant subject against a servient object. This element of overpersuasion, the court noted, is usually accompanied by certain characteristics such as unusual time and place, no opportunity for the individual to consult a lawyer, threats, and multiple persuaders. The court found that the school officials' manner of persuading the teacher to resign followed this pattern. Had the superintendent called the teacher into his office during business hours and pointed out relevant law, alternatives to resignation, right to consult counsel, and given time for consideration, no complaint of excessive pressure could have been made.

The court expressed no opinion on the merits of the case, the propriety of the teacher continuing to teach, or the timeliness of his rescission. It held that his complaint stated a cause of action for rescission of the resignation.

Tietz v. Los Angeles Unified School District
48 Cal. Rptr. 245
District Court of Appeal, Second District,
Division 2, California, December 21, 1965; rehearing denied, January 6, 1966. Hearing denied before Supreme Court of California, February 16, 1966.
Certiorari denied, 87 S. Ct. 53, October 10, 1966.

A tenure teacher and her husband sued the principal and the assistant principal of her high school, their wives, and the school board. The teacher alleged various causes of action for damages in excess of $500,000, her husband asked for additional damages, and both asked for punitive damages as well.

The teacher's suit rested on a number of allegations among them the following: that the principals had threatened her in order to induce her to transfer to another school, and that these threats were made pursuant to a plan to coerce teachers with greater seniority than that of the principals to transfer; and that the principals falsely stated that certain supervisors had given bad reports and ratings of her work. The teacher alleged further that she had a fine record, no prior difficulties, and that the claims of dereliction of her duties, which threatened grounds for discipline, dismissal, or removal, were known to be false by the principals and intended to harm her. The teacher asserted mental stress and physical injury and asked for special and general damages.

The school board, as an employer of the principals, was named as a defendant on the theories of respondeat superior and negligence in hiring the principals. The principals' wives were sued as co-conspirators with their husbands. The complaint was dismissed in the lower court and the teacher appealed.

As to the principals, the sole issue on appeal was whether they functioned within a discretion which inherently or by law was made a part of their positions. The established rule of law is that while a government agent is personally liable for torts he commits while acting in a ministerial capacity, he is not personally liable for discretionary acts within the scope of his authority, even though it is alleged that his conduct was malicious. The court held that the principals were immune from suit because they were acting within the scope of their duties and in the exercise of their discretion, in conducting the interview in which the teacher was taken to task. Even if their conduct went beyond the bounds of permissible personnel supervision and proper discretion, to allow the suit in order to determine the truth of the allegations which contest and challenge the propriety used in the exercise of the discretion, would frustrate the purpose of the immunity. Since the complaint failed to state a cause of action against the principals, judgment dismissing the suit following the teacher's failure to amend was proper.

While pointing out that the immunity of governmental agencies is not coextensive with the immunity of government officials in all instances and is governed by other principles of law, the court did not decide whether, in this instance, the school board also had immunity, but determined that the teacher failed to state a cause of action against the school board on other grounds. The court held that failure of the teacher to file a claim for money or damages with the school board before bringing suit, as required by statute, was fatal. In so deciding, the court rejected the argument that the statute did not require presentation of such a claim based on intentional torts, but was restricted to suits for negligence.

The dismissal of the action against the wives of the principals as alleged co-conspirators was also held to be proper, since no right of action was stated against the principals, the actual perpetrators of the alleged wrong, and no facts were pleaded showing any direct action by the wives.

The Supreme Court of the United States denied the teacher's petition for a writ of certiorari for a review of this decision.

Florida

State ex rel. Foster v. Board of Public Instruction of Duval County, Florida
189 So. (2d) 161
Supreme Court of Florida, July 27, 1966.

A teacher asked the court to compel the board of public instruction to disclose her score on a national teachers' examination. The court found that her action raised pertinent questions of fact precedent to decision. Until these questions were resolved by taking testimony, the court could not compel disclosure of her score.

Illinois

Lorton v. Brown County Community Unit School District No. 1
220 N.E. (2d) 161
Supreme Court of Illinois, September 23, 1966.

A private kindergarten teacher, whose classes were held in the basement of a public school building with knowledge and consent of the school district, slipped and fell on the floor of the building. She sought damages for the resulting injuries on a basis of the district's negligence. A statute provides that where a school district is sued, the plaintiff must file written notice of injury within six months of the date of the injury. Failure to file such notice subjects the action to dismissal. The teacher alleged that she had given the district such notice informally and was assured by an agent of the district that her complaint would be redressed. Because of this assurance, maintained the teacher, she did not even bother to consult an attorney. The district denied receipt of notice. Its motion to dismiss the complaint was granted.

The teacher appealed, arguing that the provisions for notice of injury within six months and a $10,000 limitation on recovery violated a state constitutional prohibition againt special legislation.

As to the recovery ceiling of $10,000, the court observed that the amount was all that the teacher was suing for. Therefore, in line with the court's policy of not inquiring into a statute's constitutionality to an extent greater than that required by the facts, the court did not reach this question.

The court agreed with the teacher's argument that the requirement for the filing of notice of intent to sue within six months of injury constituted special legislation because no such notice requirements existed as to similar municipal corporations. In holding the notice provision void the court said:

> The courts of this State must be open to all those similarly situated upon the same conditions, and where procedures are provided which are applicable to some and not applicable to others under substantially like circumstances and there are no discernible logical reasons apparent for the variations, they must fall as violative of...the Illinois constitution. We therefore hold that the notice provisions of the act questioned herein are null and void and of no force and effect.

Accordingly, the judgment dismissing the complaint was reversed.

Kentucky

McGuire v. Hammond
405 S.W. (2d) 191
Court of Appeals of Kentucky, July 1, 1966.

A taxpayer suit was brought against numerous defendants, including members of the school board of Carter County and the school superintendent to recover illegal expenditures of school funds. A special judge tried the case without a jury, dismissed most of the claims, and awarded substantial money judgment against the defendants on various claims.

This appeal challenged the judgment on a number of grounds. As to those involving the school superintendent, one concerned the judgment of $9,031.30 awarded against him. This sum was the aggregate amount of travel expenses paid to him by the school board over a five-year period for travel inside and outside the county. According to the record, there had been no express authorization by the board to incur these expenses in advance of the travel, but claim vouchers had been filed after the expenditures were made. The superintendent insisted that in each instance he was performing school business. There was no substantive evidence to the contrary. On this issue, the court ruled that illegal expenditure of funds for the travel was not proven by the taxpayers, and that the trial judge erred in allowing recovery of this claim against the superintendent since the contract between the superintendent and the school board and the board's minutes reflected that the superintendent was to be reimbursed for expenses incident to school business. The court said it would have been impractical and unnecessary for the superintendent to have obtained prior board authority for every item of expense.

Also appealed by the superintendent was a judgment of $1,510 based on a showing that he had received this sum from an insurance company which carried collision and liability insurance on a car owned by the school board. The car was damaged in a collision while the superintendent was driving it. It was shown that besides paying the premium, the superintendent had paid $250 of the proceeds to the person whose car was also damaged in the accident, and $1,100 went toward the purchase of a new car for the school board. The court held it was proper to award judgment against the superintendent for any portion of the proceeds for the use and benefit of the school board. However, since he had paid over $1,100 for this purpose, the judgment was reversed with direction to credit him with this amount plus the premium paid.

The trial court also made factual findings that a bus company had refunded money to the school board for undelivered school bus bodies, the checks for which were received and cashed by the superintendent, although he denied doing so. Judgment for the amounts involved were awarded against the superintendent. On appeal, the court held that despite the contrary evidence offered by the superintendent, the testimony was sufficient to sustain the court's finding. But since the record had indicated that the board had recovered the sum of $2,147.89 by voluntary payment from another defendant, the judgment against the superintendent for these transactions was reduced to $6,106.36.

Also upheld on appeal was recovery against the superintendent and another defendant of a sum claimed to have been overpaid by the school board to the other defendant for services rendered. This overpayment was allegedly a "kickback" to the school superintendent. The court ruled that there was sufficient evidence to warrant the finding that the excess had been paid to the superintendent, despite his denial. The court ruled also that the superintendent was not prejudiced by the attendance of the trial judge outside the territorial limit of the circuit court district at a disposition-taking of the other defendant who was seriously ill in order to prevent any possible danger to him.

Wesley v. Board of Education of Nicholas County
403 S.W. (2d) 28
Court of Appeals of Kentucky, May 20, 1966.

A school superintendent ousted from his position after a hearing by a 4-3 vote of the school board, brought suit to reverse this decision, asserting that the board's action was illegal. The question on appeal was whether a bare majority of the board was authorized to oust the superintendent.

Normally school boards have five members. But where school districts merge, the respective members of the merging boards may complete the terms for which they were elected. Prior to this litigation, a merger had occurred, and the new board had a total of 10 members. At the time ouster charges were brought against the superintendent, the board membership had fallen to seven because the terms of three members had expired.

The applicable statute provided that a superintendent may be removed for cause by a vote of four members of the school board. Since the usual board has five members, the superintendent argued that this requirement means more than a bare majority and 80 percent of the board's membership must vote to oust a superintendent before the ouster may be effective. The school board argued that so long as four members of the board constitute a majority of the board, the consensus of four is enough to oust the superintendent.

The court concluded that the word "four" in the statute pertaining to the number of votes required for removal of a superintendent does not mean four members in case of all-sized boards, but means 80 percent which is the ratio the number "four" bears to the normal five-member board. In so construing the statute, the court found that the legislative purpose in requiring a vote of 80 percent of a five-member board to oust a superintendent was to assure stability in the administration of public-school affairs.

Judgment against the superintendent was reversed with directions to enter a new judgment rescinding the ouster order.

Minnesota

Minneapolis Federation of Teachers v. Obermeyer
144 N.W. (2d) 789
Supreme Court of Minnesota, August 22, 1966.

The question in this case was whether the state labor conciliator may conduct hearings for the purpose of establishing an appropriate bargaining unit to represent teachers in their negotiations with the Minneapolis school board, pending an appeal from a decision of the district court holding unconstitutional a statute, preventing him from doing so.

The challenged statute, the Public Employees' Labor Relations Act, governed the rights of public employees in their labor relations. One section provided that the act did not apply to school teachers. The Minneapolis Federation of Teachers, a union group, brought an action, claiming this exclusion to be unconstitutional, and sought an injunction requiring the labor conciliator to specify a representative unit for negotiation with the school board. The school board also brought an action to secure a declaratory judgment fixing the rights and obligations of parties affected by the act. The Minneapolis Education Association was joined as a party defendant in both actions. The trial court held that the challenged section was unconstitutional but otherwise denied affirmative relief. The teachers' association appealed this decision. While the appeal was pending, the labor conciliator, at the request of the teachers' union, scheduled a hearing to gather evidence and testimony on the establishment of an appropriate representation unit. The association then moved for and was granted a temporary stay of the proceedings before the state labor conciliator. The immediate question was whether the stay should be extended until the appellate court rendered a decision on the merits.

The court extended the stay of the proceedings. It was of the opinion that the potential harm which might result from revoking the stay far outweighed that which was likely if it were extended until a decision on the merits was handed down. If the statute's constitutionality is upheld, the efforts of the parties before the court and the resources of the conciliator's office would have been expended in vain. On the other hand, if the statute is found to be unconstitutional, the only serious consequence would be the deferment for about 90 days of the right to bargain collectively at a time when most contracts for the coming year had been entered.

New York

Cross v. United States of America
250 F. Supp. 609
United States District Court, S. D., January 28, 1966.

(See Teacher's Day in Court: Review of 1964, p. 57; Review of 1963, p. 44.)

A New York City college professor of foreign languages sued for a tax refund of $519.42 on his 1954 income tax return. He claimed that he was entitled to deduct as a business expense the sum of $1,300 he spent on a three-month trip to Europe which the Commissioner of Internal Revenue has disallowed.

In previous appearances of this case, the federal district court had ruled that the expenses were incurred for education to maintain and improve the teacher's skills and were deductible as an ordinary and necessary business expense. Summary judgment was granted in favor of the teacher on the basis that there was no genuine issue of fact to be tried. On appeal by the Government, the decision was reversed. The appellate court held that the Government was entitled to a trial for a factual determination of what parts, if any, of the traveling expenses were attributable to vacation travel or to business (336 F. (2d) 431).

After a trial, the court concluded that the teacher had failed to prove by a preponderance of credible evidence that the primary purpose of the trip or any part of it was to maintain and improve his skills as a teacher of French, Spanish, or Romance linguistics. Although there were findings of fact that the teacher has spent time visiting museums, libraries, law courts, book publishers, and conversing in French, the court found that the trip was a vacation, personal in nature. The court said that the teacher's knowledge of French may have facilitated his travels, but it was not evident that the travels were motivated by a primary purpose of improving his French. Furthermore, the teacher's case was not aided by his having spent nearly one-half of his time in France at a beach resort, even though some part of his time may have been spent in vocabulary acquisitions.

Garber v. Board of Education of the City of New York
271 N.Y.S. (2d) 329
Supreme Court of New York, Special Term, Kings County, Part I, June 13, 1966.

(See page 12. Case involves sick-leave pay.)

Widger v. Central School District No. 1 of the Towns of Ellicottville, Great Valley, East Otto, Franklinville, Humphrey and Mansfield, Cattaraugus County
219 N.E. (2d) 425
Court of Appeals of New York, July 7, 1966.

(See page 19. This action is based on tort and breach of contract.)

Texas

Fugate v. United States of America
259 F. Supp. 398
United States District Court, Western District of Texas, El Paso Division, August 1, 1966.

A college professor of English and a primary-school teacher, husband and wife, toured Europe during the 1961 summer vacation. The husband's passport application stated that the purpose of the trip was business and pleasure. The wife's application stated that it was only for pleasure. The husband's college gave credit to students taking tours under the English Department auspices. In the spring of 1961 the department chairman advised the members of the department that the tour would be rotated among them and that they would be better able to direct the tour if they traveled themselves. Both husband and wife claimed in their tax return that their European trip was primarily for business purposes and, therefore, its cost was a deductible educational expense.

The court held that expenditures were not properly deductible because the tour was not taken by either teacher to meet the express requirements of the employer to retain the teacher's salary, status, or employment, or to improve and maintain employment skills. The court found that the suggestion of the English Department chairman that teachers take steps to prepare themselves to conduct school-sponsored study tours was not a requirement within the regulations relating to educational expense deductions.

The court rejected the teachers' argument that the deduction was still allowable because the trip had helped them maintain or improve teaching skills, since improvement of teaching skills was not the trip's prime objective. It was no more suitable a trip for a teacher than any other person, since the teachers did no specialized studying and saw no people or places of interest to their institutions. In short, it was an ordinary sightseeing trip, personal in nature.

Russell v. Edgewood Independent School District
406 S.W. (2d) 249
Court of Civil Appeals of Texas, San Antonio, July 27, 1966; rehearing denied, September 21, 1966.

A teacher brought suit against the school district and the school superintendent alleging that they discharged her because she was a member and president of a local teachers union. The teacher did not seek reinstatement in her position, or back pay for the period she was discharged. She asked for actual damages, exemplary damages, and damages for mental anguish and humiliation. The suit was based on statutory provisions that no person shall be denied employment on account of membership or nonmembership in a labor organization.

After a jury trial, judgment was rendered against the teacher. This judgment was affirmed on appeal.

The court held that a school superintendent, in recommending the hiring or discharge of teachers, and school-board members, in the hiring and discharge of teachers, exercise a governmental function and, therefore, they are protected by governmental immunity from tort actions. Since this suit did not ask for reinstatement of the teacher but was a suit sounding in tort, neither the school district nor the school superintendent was answerable for possible damages caused for wrongful discharge or failure to re-employ the teacher. In so holding, the court stated that there was nothing in the statutes providing that persons shall not be denied public employment by reason of membership or nonmembership in labor organizations to indicate that the legislature intended to destroy the defense of governmental immunity and allow suits for damages under these statutes against school districts, board members, and school superintendents.

The court ruled further that the school superintendent, while acting in the scope of his employment, could not be held personally liable in a tort action, even though he induced the school-board members to breach the contract with the teacher and induced them not to re-employ her for the 1960-61 school year.

Nor could this action be considered one for breach of contract and back salary which had not been paid the teacher for the second semester of the night school and the summer of 1960. Even if it could be so considered, the court said, before there could be recovery for the unpaid salary, the discharged teacher must allege and prove that current funds were available to pay her salary at the time the contract was made. This the teacher failed to do, since the undisputed evidence showed that teachers in the night school and summer school were paid out of student tuition fees, and there were no funds available to pay the teacher's salary for the second semester.

Wisconsin

Ranous v. Hughes
141 N.W. (2d) 251
Supreme Court of Wisconsin, April 12, 1966.

A teacher who was discharged from her position sued the chairman of the school board in his personal capacity for libel based on the dismissal letter he wrote and caused to be delivered to the school superintendent and the school principal.

The discharge resulted from an incident in the teacher's eighth-grade class on the afternoon of the assassination of President Kennedy. In the days that followed, the board chairman had received oral complaints as well as written reports from the school superintendent and the principal that the teacher had violently shaken one child and had severely rebuked other children in the class for crying and sobbing. The chairman contacted three available members of the five-member board. These three members concurred with the chairman that the teacher should be discharged and agreed that this be done by a letter which was drafted by the chairman and which they approved. The board ratified the dismissal in a formal action a week later.

The dismissal letter stated that the teacher acted physically and orally in a very offensive manner and with utter discompassion toward the grievous occasion of the assassination of the President before a group of eighth-grade pupils and subjected them to unwarranted traumatic experience. Further, that the teacher's professed attitude and intemperate behavior were incompatible with the principles of patriotism, nationalism, and respect for elected leaders which are being taught in the school system.

The school principal had read the letter to teachers in the school, but this was not known to the discharged teacher until some months later. She had by then already shown the letter to a reporter whose newspaper published a portion or it. She was also the source of information about the letter to other news media.

The lower court denied the motion of the board chairman for summary judgment in his favor. On appeal he contended that the motion should have been granted because the letter was not defamatory; that he was not responsible for its publication; that the teacher consented to the publication; that the letter was an act of the board for which he could not be held liable as an individual; and that the letter was either absolutely or conditionally privileged.

The court held that the letter in question was defamatory within the test that a communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. The reference in the letter to the teacher's unpatriotic attitude and intemperate and offensive behavior, the court stated, would tend to deter school authorities from hiring her, and falls within the definition of defamation.

On the matter of individual liability, the court ruled that a member of a public board who actively participates in the commission of a tort, such as publishing a libel, could not escape liability by claiming that the tort was the result of a board action for which he could not be held individually liable.

On the question of privilege, the court concluded that school-board members do not fall within the category of high ranking executive government officials whose defamatory acts should be accorded absolute privilege, but that the defense of conditional privilege was available to school-board members. However, the conditional privilege may be lost for abuse under certain conditions. In this instance, the board chairman did not lose the conditional privilege by publication of the defamatory letter to the school superintendent and school principal, since in their supervisory capacity over the teacher, they would reasonably be entitled to copies of the dismissal letter.

The court found that the state of the record was insufficient to warrant disposition of the case by summary judgment, since the written reports of the school superintendent and the principal on their investigation of the teacher's conduct on the day of the assassination were missing. These reports, the court stated, were very material to the issues of whether the board chairman believed or has reasonable grounds to believe the defamatory statements in the letter to be true, and whether the letters contained defamatory matter not reasonably believed to be essential in stating the reasons for the teacher's discharge.

For these reasons, the denial of the motion for summary judgment for the board chairman was upheld and the case was returned for trial.

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